

UNITED STATES BANKRUPTCY COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION		PROOF OF CLAIM
Name of Debtor <b>KMART Corp., et al.</b>	Case Number <b>02-B02474</b>	THIS SPACE IS FOR COURT USE ONLY
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): Jack J. Griffis, Linnie Mae B. Griffis, and Mark E. Osborn	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.	
Name and Address Where Notices Should Be sent: <b>James H. White, Esq</b> <b>Berkowitz, Lefkovits, Isom &amp; Kushner, P.C.</b> <b>SouthTrust Tower,</b> <b>420 North 20<sup>th</sup> Street, Suite 1600</b> <b>Birmingham, AL 35203-5202</b> Telephone number: <b>(205)328-0480</b>	<input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Account or other number by which creditor identifies debtor:	Check here if this claim <input type="checkbox"/> replaces <input type="checkbox"/> amends a previously filed claim, dated: _____	
1. BASIS FOR CLAIM <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other (Describe briefly) <u>Real Property Lease</u>		<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (Fill out below)  Your Social Security Number _____ Unpaid compensation for services performed from _____ to _____ (date) (date)
2. Date debt was incurred: February 14, 1990	3. If court judgment, date obtained:	
4. Total amount of Claim at Time Case Filed: <b>\$488,404.80</b> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input checked="" type="checkbox"/> 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. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other  Value of Collateral: \$50,000 Amount of arrearage and other charges at time case filed included in secured claim, if any: See attachments hereto.		6. Unsecured Priority Claim. <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4000),* 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). <input type="checkbox"/> Contributions to an employee benefit plan—11 U.S.C. § 507(a)(4) <input type="checkbox"/> Up to \$1,800* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use—11 U.S.C. § 507(a)(6) <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child—11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units—11 U.S.C. § 507(a)(8) <input type="checkbox"/> Other—Specify applicable paragraph of 11 U.S.C. § 507(a)____  *Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after 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		THIS SPACE IS FOR COURT USE ONLY  <b>KP 671</b>  <b>3/18/02</b>
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.		
Date: <b>14-MAR-02</b>	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):  <b>James H. White, Esq. Counsel for Claimants</b>	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

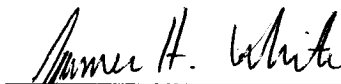
## Exhibit A to Proof of Claim

Jack J. Griffis, Linnie Mae B. Griffis, and Mark E. Osborn ("Claimants") submit this claim pursuant to 11 U.S.C. §§ 365(g) and 502(b)(6) for damages arising out of the rejection by the debtor of that certain Lease dated February 4, 1990 by and between Claimants, as Landlord, and K. Mart Corporation, as tenant, a copy of which is attached hereto and incorporated by reference.

The lease rejection damages are as follows:

- |  |               |
|--|---------------|
| (1) Rent due as of the filing date:  | \$0.00        |
| (Claimants reserve the right to amend the proof of claim to include common area maintenance charges "CAMS")  |               |
| (2) Rent reserved by the lease, without acceleration, for 15% (\$407,004 per annum), of the remaining term of such lease (8 years), as of the filing date: | \$ 488,404.80 |

Respectfully submitted this the 14<sup>th</sup> day of March, 2002.



James H. White, Esq.  
Counsel for Claimants

OF COUNSEL:

BERKOWITZ, LEFKOVITS,  
ISOM & KUSHNER  
A Professional Corporation  
420 North 20th Street, Suite 1600  
SouthTrust Tower  
Birmingham, Alabama 35203-5202  
(205) 328-0480

LEASE

-between-

JACK J. GRIFFIS, LINNIE MAE B. GRIFFIS and MARK E. OSBORN,

Landlord,

-and-

K MART CORPORATION,

Tenant.

Dated: FEBRUARY 14, 1990

Shopping Center

Location:

Bessemer, Alabama

*FOREWARD*

THIS LEASE made and entered into as of this 14 day of January, 1990, between JACK J. GRIFFIS, LINNIE MAE B. GRIFFIS and MARK E. OSBORN, having an office at c/o Griffis Realty Company, 520 North 19th Street, Bessemer, Alabama 35020 (herein collectively referred to as "Landlord"), and K MART CORPORATION, a Michigan corporation, having its principal office at 3100 West Big Beaver Road, Troy, Michigan 48084 (herein referred to as "Tenant").

W I T N E S S E T H :

In consideration of the rents, covenants, agreements and conditions herein reserved and contained, Landlord and Tenant do hereby covenant, promise and agree as follows:

1. Demised Premises and Common Area.

Landlord does hereby demise and lease to Tenant, and Tenant does hereby lease and take from Landlord, for the term hereinafter set forth, premises hereinafter described ("Demised Premises"), together with a reasonable area for loading and unloading adjacent to each service door of the Demised Premises, within the shopping center hereinafter described (the "Shopping Center"), situated in Bessemer, Alabama together with any and all easements, licenses, rights, appurtenances and privileges now or hereafter belonging or appertaining thereto. The Shopping Center is more particularly described on Exhibit A attached hereto and made a part hereof. The Shopping Center consists of the land (and all improvements that may from time to time be thereon) represented by the area outlined by a bold line upon a certain plan (the "Plot Plan") attached hereto and made a part hereof as Exhibit B. Notwithstanding anything to the contrary in this Lease, in the event of any discrepancy or inconsistency between Exhibit A and Exhibit B, (i.e. if Exhibit A should incorrectly describe the Shopping Center as shown outlined in Exhibit B) the provisions of Exhibit B shall be and be deemed to be controlling and effective. The Demised Premises consist of (i) a one-story building containing approximately 73,590 square feet of ground floor area, which building is in the location designated on the Plot Plan as "K mart", (ii) the land immediately thereunder and the adjoining land, marked "K mart Expansion Area" on Exhibit B, on which K mart will build an addition of approximately 12,185 square feet as hereinafter set forth, and (iii) together with a garden shop area contiguous thereto, containing approximately 3,024 square feet (the "Outside Areas"), all as depicted on Exhibit B. Landlord hereby grants to Tenant the non-exclusive right to use, in common with other tenants of the Shopping Center, the portions of the Shopping Center intended to be for common use, including, but not limited to, any parking areas, roads, curb-cuts, streets, drives, tunnels, passageways, landscaped areas, open and enclosed malls, exterior ramps, walks and arcades (hereinafter collectively called "Common Area").

2. Term.

The term of this Lease shall commence on the date ("Commencement Date") which is the Possession Delivery Date, as defined in Article 7. As used in this Article 2 and throughout this Lease, the "Rent Commencement Date" shall be the first to occur of (i) one year following the Possession Delivery Date, and (ii) the opening for business with the public of a K mart store in the Demised Premises.

The term of this Lease shall continue to and shall include the date (such date, or if the term of this Lease be extended, the date of expiration of the latest extension period, as hereinafter defined, for which Tenant shall have exercised its

option to extend, being hereinafter called the "Expiration Date"), which is (1) twenty (20) years from the day before the Rent Commencement Date if the Rent Commencement Date is the first day of a month, or (2) twenty (20) years from the last day of the month in which the Rent Commencement Date occurs if the Rent Commencement Date is not the first day of a month. Within ten (10) days after request of either party after the Rent Commencement Date has been determined, Landlord and Tenant shall execute, acknowledge and deliver to each other duplicate originals of an agreement in the form provided in Exhibit C, setting forth the Commencement Date, the Rent Commencement Date, the date of expiration of the initial term of this Lease and the commencement dates of the extended periods. The term "Lease Year" shall mean the following: the first Lease Year shall be the 12-month period commencing (i) on the Rent Commencement Date if the Rent Commencement Date is the first day of a month, or (ii) on the first day of the month immediately following the month in which the Rent Commencement Date occurs if the Rent Commencement Date is not the first day of a month; and each succeeding 12-month period thereafter shall be a Lease Year.

### 3. Annual Minimum Rental.

Tenant shall, during the Lease term (including any renewals thereof as set forth in Article 11), from and after the Rent Commencement Date, pay to Landlord, at such place as Landlord shall designate in writing from time to time, annual minimum rental of FOUR HUNDRED SEVEN THOUSAND FOUR DOLLARS (\$407,004) per annum, unless abated or diminished as hereinafter provided, in equal monthly installments of THIRTY THREE THOUSAND NINE HUNDRED SEVENTEEN DOLLARS (\$33,917) on the first day of each month, in advance, commencing upon the Rent Commencement Date; provided, however, in the event the Rent Commencement Date shall not be the first day of a calendar month, then the rental for such month shall be prorated upon a daily basis.

### 4. Additional Rental.

In addition to the aforesaid annual minimum rental, with respect to any Lease Year during the Lease term in which Tenant's "gross sales", as hereinafter defined, shall exceed the sum of TWELVE MILLION FIVE HUNDRED THOUSAND DOLLARS (12,500,000) (the "Breakpoint Amount"), for such Lease Year, Tenant shall pay to Landlord, as additional rental, a sum equal to one percent (1%) of the amount by which gross sales for such Lease Year exceed the Breakpoint Amount for such Lease Year.

Said additional rental shall be paid on or before the thirtieth (30th) day following the end of each Lease Year. Tenant shall, on or before the 30th day following the end of each Lease 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 Lease Year or lesser period. The term "lesser period", as used herein, shall be any period beginning on the first (1st) day of any Lease Year and ending, by reason of the termination of this Lease, prior to the end of such Lease Year. In the event that a period of more or less than twelve (12) months shall be so required to be included in any such statement, then the dollar amounts referred to in the preceding paragraph shall be proportionately increased or decreased, as the case may be. As set forth in the Real Estate Tax Rider to this Lease, certain amounts paid by Tenant in any Lease Year for real estate taxes may be offset against any such amounts due as percentage rent for such Lease Year.

Landlord or its agent may inspect Tenant's record of gross sales annually, provided such inspection shall be made at Tenant's principal office within six (6) months after the statement of sales shall be delivered to Landlord and 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 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 or any occupant of the Demised Premises, 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:

(a) sales of merchandise subsequently returned for refund or credit, merchandise transferred to a warehouse or another store of Tenant, discounts on merchandise which shall be allowed to employees of Tenant, or merchandise which shall be issued in redemption of trading stamps, if any, which shall have been issued free of charge to Tenant's customers at the time of sale of other merchandise or services;

(b) any and all taxes levied upon, assessed against or measured by the receipt or purchase of merchandise from any occupant of said Demised Premises, and any and all sales taxes and other taxes levied upon, assessed against, based upon, or measured by (i) such occupant's gross receipts, or any part thereof, or (ii) the sale or 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, retailer's 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.

(c) receipts from any of the following provided the same do not occupy more than an aggregate of 2500 square feet of the Demised Premises: (i) the sale of policies of insurance, mutual funds, stocks, bonds and other securities, travelers checks, money orders, and similar items; (ii) the sale or rendition of financial services of all types, including, without limitation, the operation of checking and savings accounts, the issuance or cashing of checks, the furnishing of bill paying, custodial, investment and fiduciary services, the making of secured and unsecured loans, the operation of facilities for the electronic transfer of funds and use of credit cards, the preparation of income tax returns, and real estate or loan brokerage; (iii) the sale of postage stamps, fishing and hunting licenses and tickets (including but not limited to, those customarily sold by travel and theatre agencies); (iv) professional services (including, without limitation, legal, medical and dental); and (v) travel agency and other services rendered to increase customer traffic;

(d) receipts from any of the following provided same do not occupy more than an aggregate of 500 square feet of the Demised Premises: vending machines, video and/or amusement games, lockers, stamp machines, public telephones, and "kiddie rides"; and

(e) service and interest charges for time payment accounts and charge accounts.

5. Landlord to Pay Real Estate Taxes.

Landlord shall cause the Shopping Center including the Demised Premises to be maintained entirely within a tax parcel(s) or lot(s) which do not include any property not part of the Shopping Center, and Landlord shall pay and discharge before delinquent all Real Estate Taxes as hereinafter defined, which become due during the term of this Lease. SEE RIDER: "TENANT'S PORTION OF REAL ESTATE TAXES" ATTACHED HERETO AND MADE A PART HEREOF.

6. Landlord's Work to Fit the Premises for Delivery.

Landlord covenants and agrees that Landlord's warranties, covenants and representations with respect to the Demised Premises will be fulfilled as set forth in Exhibit D attached hereto and made a part hereof.

7. Delivery of Possession.

Landlord shall be deemed to have delivered to Tenant possession of the Demised Premises on the date (the "Possession Delivery Date") on which the latest of all the following shall have occurred:

(A) Actual possession of the Demised Premises shall have been delivered to Tenant broom clean, free of trade fixtures, furniture and equipment owned by, leased or used by the predecessor tenant or anyone claiming under it, and free of all leases (other than this Lease), tenancies and occupancies, and Landlord shall be the title owner of the fee simple or have a valid leasehold title to the Shopping Center, free and clear of any assignments, contracts, agreements, restrictions, violations, mortgages and other liens and encumbrances, except as set forth in Exhibit E or Exhibit H attached hereto and made a part hereof, and that all equipment installed and other improvements located upon the Demised Premises and/or within Tenant's building by Landlord or its predecessor in interest for the benefit of and in connection with the use and occupancy thereof by the predecessor tenant have not been removed and remain intact, and that the Demised Premises (including construction of the K mart Expansion) and the Shopping Center and the use of the same for retail stores and parking areas in connection therewith shall be in full compliance with all laws, ordinances and regulations of public authorities and insurance rating bureaus having jurisdiction (including, without limitation, zoning and building codes) and shall not violate the rights of any third parties.

(B) All utilities to and in the Tenant's building shall be in adequate supply and in good working order and repair; the storm and sanitary sewer drainage in the Common Area shall be adequate and in good working order and repair; the Common Area shall be usable for the purposes intended; any work remaining to be done by Landlord on the Tenant's building or the Common Area shall be of such a nature as not to interfere with or prevent Tenant's full use and enjoyment of the Demised Premises and the Common Area and the alterations in Tenant's building by Tenant.

(C) The zoning of the Shopping Center and all other laws, orders and regulations shall then permit the occupancy of the Tenant's building (including construction of the K mart Expansion) for the operation of a standard K mart store, and shall then permit the parking of private

automobiles in the Common Area where parking is shown on Exhibit B.

Tenant's entry upon, making alterations upon, or opening of the Demised Premises prior to fulfillment of all of the foregoing requirements shall not be deemed per se a waiver thereof.

Unless Tenant opens the Demised Premises to the public for business, the Rent Commencement Date shall not occur until a temporary or final or permanent certificate of occupancy (or its local equivalent if certificates of occupancy are not issued in the jurisdiction) shall have been obtained by Landlord at its expense and delivered to Tenant permitting use of the Demised Premises (including the Outside Areas) as intended by Tenant, and if a temporary certificate, then Landlord shall procure a final or permanent certificate as promptly as practical thereafter, failing which all rent and additional rent shall abate, if the temporary certificate terminates or expires (provided that the foregoing shall not be deemed applicable to any certificate of occupancy for the K mart Expansion). Notwithstanding the foregoing, subject to the accuracy of Landlord's representations, covenants, and warranties in Article 7 and 10, and the last sentence of Article 13D (including without limitation that the construction of the K mart Expansion will not violate any zoning or other codes or the rights of any third parties), Tenant will be responsible to pay for all building permits and any certificate of occupancy to the extent same relate to or are required by any work performed by Tenant.

8. Entry for Fixturing.

Tenant shall have the right and privilege, after the execution and delivery of this Lease and prior to the Possession Delivery Date, whenever Tenant shall deem it appropriate, to enter Tenant's building, rent free, to make such improvements and alterations thereto (including without limitation any work required to accomplish the initial store plan, including the K mart Expansion as hereinafter defined, substantially as shown on Exhibit F; all of which work, whether structural or non-structural in nature, is hereby consented to by Landlord), and shall have the right to make and install therein fixtures, supplies, merchandise and other property, as it shall deem necessary or appropriate to fit it for its occupancy in conducting business thereat. Tenant agrees that such entry as aforesaid shall be at its own risk and Landlord shall have no liability to Tenant for personal injuries sustained or death of any Tenant's employees or representatives, or damages to any property of Tenant or any of its employees or representatives stored on the Demised Premises. Such entry shall not be construed as an acceptance of possession by Tenant under the provisions of this Lease, or as a waiver of any of the provisions hereof. Tenant shall pay the cost of water, electricity, heat, air conditioning and other utilities used upon the Demised Premises during any period of entry by Tenant. Notwithstanding any entry into the building or acceptance of possession by Tenant prior to the Possession Delivery Date, Landlord shall comply with the provisions of Articles 6, 7, and Exhibit D hereof.

Notwithstanding anything to the contrary set forth in this Lease, payments of annual minimum rental under Article 3, Percentage Rent under Article 4, and Tenant's CAM Reimbursement and Tax Portion under the Riders to this Lease shall not begin to accrue and be payable until the Rent Commencement Date. All other provisions of this Lease, however, shall (unless expressly otherwise provided herein) be binding and effective from and after the Commencement Date.

9. Parking and Other Common Areas.



A. During the term of this Lease, the Common Area (as marked on Exhibit B) shall be sufficient for the parking of not less than 684 standard size American made automobiles. Furthermore, and notwithstanding the foregoing sentence, Landlord will at all times during this Lease maintain a ratio in the Shopping Center of parking spaces (sufficient for standard size American made automobile) in the Common Area for each 1,000 square feet of leasable building space in the Shopping Center (including the K mart Expansion and any other buildings hereafter constructed) that is not less than the ratio which exists as shown on Exhibit B. 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 lands described in Exhibit A and depicted on Exhibit B, utilize the Common Area located on said lands for parking or other purposes to an extent which shall be reasonably objectionable to Tenant, Landlord, at its sole expense, upon written request of Tenant, shall take whatever action as shall be so reasonably requested to prevent said unauthorized utilization.

B. Landlord shall keep and maintain, at Landlord's cost and expense, the Common Area in good condition and repair, including, but not limited to, repairing and replacing paving, repairing and maintaining bridge over Hall's Branch Creek and connecting roadway to U.S. Highway 11; keeping the Common Area properly cleaned, drained, free of water, rubbish and other obstructions, and in a safe, neat, clean, orderly and sanitary condition; keeping the Common Area and such other areas suitably lighted during, and for appropriate periods before and after, Tenant's business hours; maintaining signs, markers, painted lines (painting lines as may be necessary) and other means and methods of pedestrian and vehicular traffic control; maintaining adequate roadways, entrances and exits; and maintaining any plantings and landscaped areas; and also, if required by appropriate governmental authority having jurisdiction thereof, maintaining traffic signals or lights, as the case may be, which are presently installed or may be installed hereafter, servicing tenants' businesses conducted in the Shopping Center.

C. Except as otherwise hereinafter expressly provided for the conduct of seasonal sales made by Tenant, the parking spaces in the Common Area shall be used non-exclusively for the parking of private automobiles of the respective tenants of the Shopping Center and their respective customers, licensees, subtenants, employees, agents, concessionaires, guests and invitees, and for no other purpose, and the access, perimeter and through roads, streets and drives shall be used for pedestrian and vehicular traffic and no other purpose. The layout of, and striping in, the Common Area, as depicted on Exhibit B, shall not be changed without Tenant's consent. (It is acknowledged that Exhibit B shows Common Area as same will be following completion of Landlord's work set forth in Exhibit D, not as presently existing.) If so designated on Exhibit B, employees of the tenants of the Shopping Center shall not park their automobiles in the Common Area, except in the area designated as "Employee Parking" on Exhibit B, and Landlord shall use its best efforts to prevent any violation of this provision. SEE RIDER: TENANT'S COMMON AREA CHARGE.

D. Landlord shall not exact any charge or permit others to exact any charge for use of the Common Area from customers, invitees, licensees, subtenants or employees of Tenant or any other tenant in the Shopping Center.

Notwithstanding the foregoing, to the extent existing Shopping Center tenants have rights pursuant to their existing leases to display or sell merchandise on sidewalks, such existing tenants may continue to do so. Landlord, however, agrees it will

not grant any such rights to sell or display on sidewalks to future tenants.

E. There will be no advertisements or signs in the Common Area except the pylon sign or signs hereinafter provided for and the traffic control signs. No merchandise shall be sold or displayed, and no loudspeakers shall be operated in the Common Area, except as otherwise set forth in this Lease.

F. Notwithstanding any provision to the contrary, in making any replacement, change, restoration, alteration, improvement, enlargement or repair of or to the Tenant's building (including without limitation the K mart Expansion), Tenant and its contractors and suppliers may use the portion of the Common Area adjacent to the Tenant's building for the parking of trucks and delivery vehicles, storage of materials, temporary structures and other matters incidental to such work; provided, however, that no such use shall unreasonably interfere with the operation of the Shopping Center or with the business of any tenant in the Shopping Center. In making any permitted or required replacement, change, restoration, alteration, improvement or repair of or to any portion of the Shopping Center, Landlord, any tenant in the Shopping Center and their or Landlord's contractors and suppliers may use such portions of the Common Area as are not directly adjacent to the Tenant's building for the parking of trucks and delivery vehicles, storage of materials, temporary structures and other matters incidental to such work; provided, however, that no such use shall unreasonably interfere with the operation of the Shopping Center or of the business of Tenant or any subtenant or licensee of Tenant.

G. During the Lease term, Landlord shall keep Tenant insured (as a named party) against all statutory and common law liabilities for damages on account of damage to property or injuries and loss of life sustained by any person or persons within said Common Area in a policy or policies in the combined single limit amount of One Million Dollars (\$1,000,000) with respect to any one accident or disaster, and in the amount of Five Hundred Thousand Dollars (\$500,000) with respect to damage to property. Each of the foregoing amounts shall increase by 25% at the end of the 5th Lease Year and at the end of every 5 Lease Years thereafter. Landlord shall and hereby does indemnify Tenant from and defend and hold Tenant harmless against any and all claims, including without limitation legal fees and expenses, for personal injury, death and property damage occurring on the Common Area (except such claims caused by Tenant's sidewalk or truck sales). Any such policies shall bear endorsements to the effect that Tenant shall be notified not less than ten (10) days in advance of any modification or cancellation thereof. Copies of such policies, so endorsed, or certificates evidencing the existence thereof, shall be promptly delivered to Tenant.

H. Tenant may, at any time and from time to time, subject to the provisions of Article 26 hereof, utilize portions of the sidewalks and the Common Area for seasonal sales made from trucks, trailers, vans or other temporary facilities used by Tenant in the area outlined in black designated "Truck Sales" depicted on Exhibit B, and on sidewalks adjacent to Tenant's building, provided the same do not unreasonably impede pedestrian traffic. Sales, if any, from such use shall be included as part of "gross sales" under Article 4 hereof.

10. Landlord's Representations and Warranties.

Landlord represents, warrants and covenants that it shall, prior to February 1, 1990, complete the Landlord's Work set forth in Exhibit D. Landlord further represents, warrants and covenants that it will not erect hereafter (or suffer, permit, or allow any Shopping Center tenant, subtenant or other occupant to

erect) any buildings or other structures on the lands described in Exhibit A, except as shown on Exhibit B as presently existing or in Area "T" on Exhibit B (provided that notwithstanding any such construction in Area T, there shall at all times be maintained within the Shopping Center the ~~5:1~~ parking ratio referred to in Article 9A), and neither at this time nor at any time hereafter will any part of the Shopping Center be used for industrial or warehouse purposes, except that an occupant of retail space may utilize a portion of its space for incidental storage of merchandise or other items in conjunction with the conduct of business thereat. Landlord further warrants, covenants and agrees that no building hereinafter constructed in Area T shown on Exhibit B will exceed one story or 22 feet in height, and that any such future new buildings will be architecturally compatible with other buildings in the Shopping Center.

*Free*  
*Handwritten initials*

Landlord further represents, warrants and covenants that: (i) the Shopping Center described in Exhibit A and the Demised Premises are and will be at the time of the commencement of the Lease term, properly zoned for retail store use and parking areas in connection therewith, and that all necessary governmental consents, permits and approvals for such use (including without limitation construction of the K mart Expansion and garden center) shall have been obtained; and (ii) no other lease of space in the Shopping Center, nor any other instrument encumbering the Shopping Center, whether or not set forth in Exhibit E, would prohibit, restrict, or be violated by the use of the Demised Premises (including without limitation the Outside Areas and construction of the K mart Expansion) by Tenant as permitted under this Lease.

Landlord further represents, warrants, and covenants as follows:

(i) In the parcels adjoining the Shopping Center marked "X", "Y", "W" and "Z" on Exhibit B, Landlord will, prior to the Commencement Date, cause the following restrictive covenants to be placed of record regarding such properties: (a) regarding "X" and "Y", any buildings now or hereafter constructed on such parcels will not exceed one story or 22 feet in height and will not exceed in ground floor areas 25% of the total area of either such parcel (foregoing ratios to separately applied to parcels X and Y); provided that with regard to said parcels "X" and "Y", Landlord will not be deemed in default of the aforesaid ground floor area ratio as long as Landlord does not hereafter increase the number of square feet of ground floor building area currently in either of said parcels "X" and "Y" nor decrease the current number of parking spaces in either said parcel, (b) regarding "X", "Y", "Z" each of said parcels will maintain a ratio of at least 5 usable parking spaces for each 1000 square feet of building area on said parcel (ratios to be separately applied), (c) regarding "W", "X", and "Y", no building on any said parcel may be used in violation of the provisions of Article 38 of this Lease (as if said parcels were part of the Shopping Center other than Area "T"; except that a car wash, office space, or mini-warehouse may be placed on "W"), (d) regarding "X" and "Y", there shall be unimpeded cross access and parking easements between said parcels and the Shopping Center, and (e) regarding "W", no improvement will be constructed thereon without the prior written consent of Tenant, which Tenant may withhold if in Tenant's reasonable judgment such improvement (including any projected car lanes or traffic flow) would hinder or impede access to Tenant's loading area. Said restrictive covenants shall expressly be applicable throughout the entire term of this Lease, including any renewals, and shall expressly provide that they are for the benefit of, and enforceable by, and may not

be cancelled or modified without the written consent of, Tenant and its successors and assigns.

(ii) Landlord will use its best efforts to obtain, as expeditiously as possible, a new curb cut (and all required permits and approvals in connection therewith) from 8th Avenue, approximately at the intersection of lots 6 and 7.

Landlord covenants that (except for parcels X, Y and Z, subject to the foregoing provisions regarding same) it will not hereafter grant or execute any easements or licenses permitting parking or other use of Common Areas by persons not Shopping Center tenants or their invitees; including without limitation any parking and/or access easements in favor of properties adjoining the Shopping Center.

Notwithstanding anything to the contrary herein contained, if (i) all of the warranties and obligations of Landlord in Exhibit D should not be fully performed and fulfilled on or prior to April 1, 1990; or (ii) if any of the representations, warranties, and covenants of Landlord set forth in Articles 7, 9, 10 or the last sentence of Article 13D should be breached and Landlord shall not correct same within 15 days following notice from Tenant (provided that if same may not reasonably be corrected in 15 days, as long as Landlord commences to correct same within said 15 day period and diligently and continuously proceeds with such cure, Landlord shall have up to an additional 90 days to correct same); then in either such event Tenant, in addition to and not in limitation of any other legal or equitable remedies it may have under law or this Lease by reason of such Landlord default, may cancel and terminate this Lease on notice to Landlord given at any time prior to the full cure by Landlord of any such default. \*

If this Lease should be cancelled or terminate pursuant to the foregoing provisions of Article 10, or for any other reason whatsoever other than Tenant's default, prior to the Rent Commencement Date, then notwithstanding anything to the contrary contained in this Lease (including any express or implied provisions that the term hereof has not commenced or that neither party would have further liabilities or obligations upon a cancellation), Landlord, within 15 days following presentation to it of paid bills or other reasonably satisfactory evidence of expenditures, shall reimburse Tenant in full (but not in excess of \$1,008,800) (by wire transfer of federal funds for immediate credit to an account designated by Tenant (up to \$1,008,800) for all amounts expended by Tenant in construction of the K mart Expansion, including all costs of labor, materials, insurance, permits, engineering and other professional fees and charges.

#### 11. Options to Extend Lease.

(a) Tenant shall have four (4) successive options to extend the term of this Lease for an additional period of five (5) years on each such option, such extended term to 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. If Tenant shall elect to exercise any of the aforesaid options, it shall do so by giving 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 non-exercise 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 notice to Landlord not less than six (6) months prior to the expiration of the term of this Lease or any extension thereof. Tenant's rental during the option period shall be the same rental payable under the terms of this Lease at the time Tenant notifies Landlord of its intention to exercise this option.

**12. Repairs and Maintenance.**

A. Landlord shall be responsible for and make all structural repairs (both exterior and interior) to Tenant's building, ordinary and extraordinary, foreseen and unforeseen, including, but not limited to, the making of all repairs to the exterior walls, gutters, downspouts, marquee and roof of Tenant's building, so that the same shall, during the term of this Lease, be in a safe, dry and tenantable condition, and shall make any other repairs and changes required by reason of the negligence of Landlord or its employees or agents or any breach by Landlord of any provision of this Lease. Landlord shall maintain and repair all sewerage facilities and other utility facilities outside of Tenant's building. Landlord shall also make all repairs arising out of settling of the Tenant's building or any part thereof, and any repairs it is required to make pursuant to Articles 15 and 17. Landlord shall not, however, have to make: (i) any repairs (subject to the provisions of Article 17) made necessary by the negligent or wrongful acts of Tenant; or (ii) any repairs (structural or non-structural) to the K mart Expansion. Landlord shall cause all repairs and changes to be made without unreasonable interference with the operation of the Shopping Center or the business of Tenant or any subtenant or licensee of Tenant. Landlord shall reimburse Tenant promptly upon demand for any cost and expense of Tenant for the temporary moving of any merchandise and trade fixtures to enable Landlord to make such repairs and changes, unless the need to make same arose through no fault of Landlord.

In the event Tenant's building or a portion thereof shall be rendered unusable due to Landlord's default or negligence with respect to required repairs as provided in the preceding paragraph of this Article, there shall be a just and equitable abatement of said annual rental and all other charges payable under this Lease until said premises shall be made usable.

B. If unexpired, Landlord shall assign to Tenant all assignable warranties and guarantees received in connection with the construction and/or maintenance of the Tenant's building and fixtures and systems therein which Tenant is required to maintain hereunder and Landlord shall use its best efforts to enforce unexpired, non-assignable warranties and guarantees at Tenant's request and on Tenant's behalf; but same shall not relieve Landlord of any obligations provided in Subdivision A of this Article.

C. Subject to the Landlord's obligation to deliver heating and air conditioning equipment in good repair and working order prior to the commencement of the term of this Lease, Tenant thereafter shall maintain the HVAC in good order and repair and shall make: (i) such non-structural repairs and maintenance to the Tenant's building as are not required under Subdivision A of this Article to be made by Landlord, and (ii) all structural and non-structural repairs to the K mart Expansion.

**13. Structural or Non-Structural Alterations.**

A. Tenant may, at its own expense, from time to time, make such interior or exterior alterations or changes, structural or

otherwise, in and to the Demised Premises [including the Outside Areas] as it may deem necessary or suitable [and may erect structures on the Outside Areas], provided, however, Tenant shall obtain Landlord's prior written consent to drawings and specifications for such structural alterations or changes; provided, further, Landlord shall not withhold or delay its consent thereto if the structural integrity or the economic value of the building will not be materially impaired or decreased by such work. Notwithstanding the foregoing, Tenant, without necessity for any further consent by Landlord, may make any exterior, structural or non-structural additions, alterations or changes Tenant deems appropriate, in connection with Tenant's initial work to convert the Demised Premises to a K mart Store as set forth in Exhibit F (including the K mart Expansion as defined in the following paragraph), provided that the K mart Expansion is constructed substantially in accordance with such plans and specifications set forth in Exhibit F.

B. Exhibit F provides for the construction by Tenant of an expansion to the building of approximately 12,185 square feet in the K mart Expansion Area (hereinafter called the "K mart Expansion"). K mart agrees, at its sole cost and expense, to construct the K mart Expansion in a good and workmanlike manner, in compliance with all applicable local building codes, substantially in accordance with the plans and specifications set forth in Exhibit F. Any material changes to the structural or exterior elements of Exhibit F shall be subject to Landlord's consent in accordance with Article 13A.

C. As agreed reimbursement for the construction of the K mart Expansion and the other work Tenant intends to do to convert the Demised Premises to a K mart store, Landlord agrees to pay to Tenant, by wire transfer of federal funds for immediate credit to such account as Tenant may designate or by bank or certified check drawn directly to Tenant's order, the sum of ONE MILLION EIGHT THOUSAND EIGHT HUNDRED DOLLARS (\$1,008,800) (the "Landlord Payment"). The Landlord Payment shall be due and payable on the Rent Commencement Date. As security for the making of the Landlord Payment, Landlord has delivered to Tenant on the date of execution of this Lease an irrevocable letter of credit in favor of Tenant in the amount of the Landlord Payment in the form of Exhibit G hereto (the "Letter of Credit"). Upon the making of the Landlord Payment, Tenant shall return the Letter of Credit to Landlord. If the Landlord Payment is not made within 5 days of the date when due, Tenant may draw and retain the full amount of the Letter of Credit and retain same, and upon payment of the proceeds of such Letter of Credit to Tenant, Landlord shall be deemed to have made the Landlord Payment. Tenant agrees not to draw on the Letter of Credit for any reason other than non-payment of the Landlord Payment when due, except that notwithstanding the foregoing, if the Rent Commencement Date has not occurred by a date which is 15 days prior to the expiration date of the Letter of Credit, in such event Tenant may draw and retain the full amount of the Letter of Credit (but in such event, subject to the provisions of Article 7, the Rent Commencement Date shall occur upon the date when Tenant receives the full amount of the Letter of Credit). The foregoing \$1,008,800 shall be the amount payable, regardless of the actual expenses of Tenant in such construction. Tenant shall not have to account to Landlord for any such expenses, and Landlord shall not have to pay any cost overruns for such construction.

D. Any such additions, changes or alterations so made by Tenant shall become the property of Landlord, but shall be deemed included in the demise hereunder. In amplification of the foregoing, upon completion the K mart Expansion shall be considered part of the Demised Premises for all purposes under this Lease, including without limitation Articles 12 and 17. The term "structural changes", as used in this Article 13, shall not include moving of non-loadbearing partitions, minor plumbing and electrical work, relocation of or additional entry doors, modification and rearrangement of fixtures or other minor

damage to the property of Landlord or the other tenants or occupants of the Shopping Center, except as specifically set forth in this Lease. All insurance carried by Landlord on the respective buildings or structures erected within the Shopping Center, or by Landlord on any of its property, shall require Landlord to waive right of recovery against Tenant, shall contain a clause whereby the insurer agrees to waive any right of subrogation against Tenant on any claim covered by said insurance, and shall also bear standard Alabama first mortgagee fee or leasehold endorsements, as may be required.

In the event that any such damage or destruction is caused by an uninsurable casualty, which for the purposes hereof shall be deemed to be any casualty other than that for which insurance is required to be carried pursuant to the provisions of Article 17A, Tenant shall have no obligation to restore the Demised Premises, and Landlord may, but shall not be obligated to, repair, rebuild or restore, and may, within sixty (60) days of such damage or destruction, terminate this Lease by giving notice thereof to Tenant. However, upon failure to so notify Tenant, Landlord shall have been deemed to obligate itself to repair, rebuild or restore such damage or destruction, as nearly as practicable, to at least the same condition as existed immediately prior to such damage or destruction. If Landlord shall so be obligated to restore the Demised Premises in accordance with this paragraph, Tenant may elect on notice to Landlord to perform such work at Landlord's expense; in which event Landlord shall reimburse Tenant on demand for all such restoration expenses paid by Tenant. However, if this Lease shall be terminated as above provided, all unearned rent and other charges paid in advance shall be refunded to Tenant. Notwithstanding the foregoing, if Landlord so elects to terminate this Lease, Tenant shall have the right, within thirty (30) days of such election, to give notice to Landlord that Tenant elects to restore Tenant's buildings and structures within the Demised Premises as set forth in Article 17B, in which event Tenant shall be so obligated (at Tenant's expense) and this Lease shall continue in full force and effect notwithstanding such notice of termination.

Except for the obligations of Landlord or Tenant under this Article 17 and/or otherwise set forth in this Lease, 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 to its respective property covered by the insurance hereinbefore more specifically set forth in this Article 17, irrespective of the negligence of such party or any officer, agent, employee or representative of such party. Such waiver shall also extend to damage to fixtures and merchandise, whether or not same are insured by Tenant.

Notwithstanding any other provision in this Lease, if there should now or hereafter be a sprinkler system in the Demised Premises, Landlord shall not be responsible to Tenant for any claim with respect to water or other damage sustained by Tenant from any said sprinkler system and/or the operation thereof.

18. Eminent Domain.

In the event all of Tenant's building shall be expropriated (the term "expropriated" to include any transfer of the property by an eminent domain or similar proceeding or the giving of a deed in lieu thereof) or the points of ingress and egress to the public roadways substantially as depicted on Exhibit B be materially impaired by a public or quasi-public authority (and Landlord does not replace same with substantially equal access reasonably satisfactory to Tenant, within 90 days of such impairment), this Lease shall terminate as of the date Tenant shall be deprived thereof (provided that in the event of such

access impairment this Lease will not terminate unless Tenant so elects such termination in writing within 120 days of such impairment).

In the event that less than the whole but more than ten percent (10%) of Tenant's building or more than 10% of the Outside Areas shall be expropriated by public or 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, by giving 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 more than 10% of the Outside Areas, Tenant may not terminate this Lease if Landlord provides an alternate Outside Area, adjacent to and on the same side of the building and at least 90% as large as the original Outside Areas, and of a configuration reasonably usable by Tenant, within 30 days of such expropriation.

In the event of an expropriation of any portion of Tenant's building or Outside Areas and if this Lease shall not be terminated as hereinabove provided, it shall continue as to that portion of the said building which shall not have been expropriated or taken, in which event Landlord shall, at its sole cost and expense, promptly and with due diligence restore said building as nearly as practicable to complete units of like quality and character as existed just prior to such expropriation. The annual minimum rental and other charges shall abate during the period of demolition and restoration, and thereafter the annual minimum rental and the Breakpoint Amount set forth in Article 4 shall be reduced in the proportion the ground floor area of the part of Tenant's building so expropriated shall bear to the total ground floor area of said building prior to such expropriation.

If one or more expropriations shall in total deprive Tenant of the use of more than ten percent (10%) of Phase I of the Common Area, 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 notice to Landlord.

In the event this Lease shall be terminated pursuant to this Article, 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 building, Landlord shall (subject and subordinate to the rights of any mortgage to which this Lease is subordinate in and to such proceeds of Landlord) 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 (subject to Tenant providing reasonable proof of such expenditures). Said unamortized portion of Tenant's 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.

Tenant shall not be entitled to share in any award made by reason of expropriation of Tenant's building on the Demised Premises, or any part thereof, by public or quasi-public authority, except as set forth in the preceding paragraph relative to unamortized expenditures by Tenant.

Tenant shall also have the right to prosecute any claim directly and recover any compensation from the public or quasi-public authority (expropriating authority) as may be



separately awarded and recoverable by Tenant in its own right for loss of business, or depreciation to, damage to, or cost of removal, of, or for the value of stock, trade fixtures, furniture and other personal property belonging to Tenant, and also relocation expenses. Tenant shall in no event be entitled to any award or portion of Landlord's award for the loss of its leasehold interest.

19. Use, Assignment and Subletting.

The premises hereby demised may be used for any lawful purpose, except as follows:

(i) During the term of the existing Big B Drug Store lease in the Shopping Center (including any now existing renewals), Tenant may not operate a pharmacy in the Demised Premises unless Big B waives its pharmacy exclusive. Upon expiration or termination of the Big B lease, Tenant shall have the right to operate a pharmacy. Landlord covenants and agrees not to extend the Big B Pharmacy exclusive beyond the term thereof currently contained in the Big B lease.

(ii) For a use that would violate any of the other existing exclusive clauses in other Shopping Center leases set forth in Exhibit H hereto, during the term of the leases in which same are contained. Upon expiration or termination of any such existing lease containing an aforesaid exclusive, such use restriction will no longer be binding on Tenant. Notwithstanding the foregoing, Landlord may extend the Hancock Fabrics Lease and now existing restrictions will continue to be binding during extension period.

(iii) During any time in which there shall be a supermarket in the Shopping Center, not more than 2500 square feet of the selling area of the Demised Premises shall be used for sale or display of food intended for off premises consumption.

(iv) For a use set forth in Article 38.

Tenant shall not be obligated to conduct or to remain open for the conduct of any business in the Demised Premises. Tenant may assign this Lease or sublet the whole or any portion of the Demised Premises (for a use that does not violate the aforesaid use provisions of this Article 19), but if it does so, it shall remain liable and responsible under this Lease.

20. Signs.

Landlord expressly recognizes that the service mark and trademark "K mart" is the valid and exclusive property of Tenant, and Landlord agrees that it shall not either during the term of this Lease or thereafter, directly or indirectly, contest the validity of said mark "K mart", 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, contesting or in any way impairing or tending 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, and specifically acknowledges that any use thereof pursuant to this Lease shall not create in Landlord any right, title or interest in the aforesaid mark.

Tenant shall have the option to erect, at its sole cost and expense, upon any portion of Tenant's building, signs of such height and other dimensions as Tenant shall determine, bearing such legend or inscription as Tenant shall determine.

Landlord shall not permit any other signs, billboards or posters to be displayed on any portion of Tenant's building.

Except as presently permitted pursuant to pertinent provisions of existing leases, no exposed neon signs, flashing or animated sign, or roof or free-standing sign is presently erected or hereafter will be permitted to be erected for any occupant of the Shopping Center, and any other signs presently are or hereafter shall be affixed parallel to and do not or shall not project more than twelve (12) inches out from, any building or marquee.

Landlord represents and warrants that a so-called pylon structure availed of by the predecessor tenant is located as depicted on Exhibit B. Tenant shall be entitled to install and maintain the primary identification panel thereon, which shall be of such height and other dimensions as may be approved pursuant to applicable governmental law, and shall bear such legend and description as Tenant shall determine. The pylon structure may not contain an identification or advertising panel of any other occupant of space within the Shopping Center (except a supermarket may maintain existing panel) or any other person except as may be presently existing, without the written consent of Tenant. The aforementioned panel shall be maintained in good repair and in an attractive appearance and shall be lighted by Tenant, at its sole cost and expense. Tenant shall have the right to change or replace its panel at any time or from time to time during the term of this Lease. The pylon structure shall be maintained in good repair by Landlord and the cost thereof and the cost of lighting the same (other than Tenant's panel) shall be borne by Landlord (but shall be a Common Area cost). The other pylon sign in Shopping Center, formerly utilized by the theatre, will remain in Landlord's control and may be used for panels of other tenants.

21. Ingress and Egress.

Landlord warrants as a consideration for Tenant entering into this Lease that it will initially provide and will maintain, 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.

22. Landlord's Remedies.

If Tenant shall be in default under any provision of this Lease and shall remain so for a period of ten (10) days after notice to Tenant (if such default pertains to the non-payment of rent) or thirty (30) days after notice to Tenant of any other default, then Landlord may, by giving notice to Tenant at any time thereafter during the continuance of such default, either (a) terminate this Lease and to thereupon re-enter and take possession of said premises with or without legal process or (b) without terminating this Lease, re-enter and relet the premises, or any part thereof, with or without legal process, as agent and for the account of Tenant upon such terms and conditions as Landlord may deem advisable or satisfactory, in which event the rents on such reletting shall be applied first to the expenses of such reletting and collection, including necessary renovation and alterations of the leased premises, reasonable attorney's fees, any real estate commissions paid and thereafter toward payment of all sums due or to become due Landlord hereunder, and if a sufficient sum shall not be thus realized or secured to pay such sums or other charges, the Tenant shall pay Landlord any deficiency monthly, notwithstanding Landlord may have received

rental in excess of the rent stipulated in this Lease in previous or subsequent months. Any and all monthly deficiencies so payable by Tenant shall be paid monthly on the date herein provided for the payment of rent. Landlord shall be required to make reasonable efforts to mitigate damages.

If any default by Tenant (except non-payment of rent) cannot be reasonably remedied within thirty (30) days after notice of default, the Tenant shall have such additional time as shall be reasonably necessary to remedy such default (provided the Tenant is diligently pursuing such remedy) before this Lease can be terminated or other remedy enforced by Landlord. No reentry or taking possession of these premises by Landlord shall be construed as an election on the Landlord's part to terminate this Lease unless a written notice of such intention is given to Tenant. Notwithstanding any such reletting without termination, Landlord may at all times thereafter elect to terminate this Lease for such previous default or breach. Any such re-entry following default as aforesaid shall be allowed by Tenant, without hindrance, and Landlord shall not be liable for damages for re-entry, or guilty of trespass or forcible entry.

In the event of the employment by either party of an attorney to collect any rents or other sums due hereunder by Tenant or to enforce the performance of any obligation hereunder, or on account of the breach by the other party of any term, condition or covenant hereof, the party who is determined to be in breach of the Lease shall pay all costs and expenses thereof, including a reasonable attorney's fee. Furthermore, in the event the Tenant's default pertains to the non-payment of rent within 10 days following notice as aforesaid (or any monthly deficiency in the event of reletting) the Landlord shall be entitled to interest on the defaulted rent until paid at the rate of twelve percent (12%) per annum.

### 23. Bankruptcy.

If a petition in bankruptcy shall be filed by Tenant, or if Tenant shall be adjudicated bankrupt, or if Tenant shall make a general assignment for the benefit of creditors, or if in any proceeding based upon the insolvency of Tenant, a receiver 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 notice to Tenant of its intention so to do; provided, however, neither bankruptcy, insolvency, an assignment for the benefit of creditors, nor the appointment of a receiver shall affect this Lease or permit its termination so long as the covenants on the part of Tenant to be performed by Tenant or anyone claiming under Tenant are complied with and Tenant is not in default with respect thereto. For purposes of this Article, "Tenant" shall mean only the then current tenant in possession, not any predecessor.

### 24. Covenant of Title.

Landlord covenants, represents and warrants that as of the date of execution hereof and upon the Commencement Date, it has and will have unrestricted full right, power and lawful authority to execute and perform this Lease for the term hereof and to grant the estate demised herein and that it is seized of an indefeasible estate in fee simple of, or has a valid leasehold title to, the land described in Exhibit A, vacant and free and clear of any leases, tenancies, occupancies, assignments, contracts, agreements, restrictions, violations, mortgages and\* other liens and encumbrances, except as set forth in Exhibit E, 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, \* except for leases of other stores in the shopping center

easements, appurtenances and privileges belonging or in anywise 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 subject only to such matters set forth in Exhibit E, 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 shall, without expense to Tenant, and concurrently with the execution of this Lease, furnish (a) an as-built survey by a licensed surveyor of the land described in Exhibit A; and (b) agreements wherein each holder of any lien against the Shopping Center or 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 a ground lease, Landlord shall also, concurrently with the execution of this Lease and without expense to Tenant, deliver to Tenant an agreement in recordable form, executed by the fee owner of the Shopping Center in form and substance satisfactory to Tenant or its counsel, wherein the fee owner recognizes this Lease and Tenant's rights hereunder and agrees that, notwithstanding any default by Landlord and subsequent termination of the 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.

#### 25. Mortgage Subordination.

If there be a first mortgage lien affecting the fee interest of the Shopping Center and/or the Landlord's interest in and to any ground lease, Landlord shall obtain and shall deliver to Tenant concurrently with the execution of this Lease, a non-disturbance agreement, and this Lease shall become subject and subordinate thereto and to any renewals, modifications, replacements or extensions thereof (provided the holder of any such renewed, modified, replaced or extended first mortgage is an institution, which for the purpose hereof shall mean a federal or state chartered bank or trust company, insurance company, or pension fund of a publicly-traded corporation, labor union, or governmental or municipal entity), if and when such a non-disturbance agreement in accordance with the provisions of this Article is entered into in respect of such mortgage.

Such non-disturbance agreement shall be an agreement in recordable form between Tenant and the holder of such mortgage binding on such holder and on future holders of such mortgage in form and substance satisfactory to Tenant or its counsel, or an agreement by such holder expressed in such mortgage, which shall provide in substance as follows: (a) all condemnation awards and proceeds of insurance shall be applied in the manner provided for in this Lease, and (b) neither such holder nor any other holder of such mortgage shall name or join Tenant as a party-defendant or otherwise in any suit, action or proceeding to enforce, nor will this Lease or the term hereof be terminated (except as permitted by the provisions of this Lease) or otherwise affected by the enforcement of any rights given to any holder of said mortgage, pursuant to the terms, covenants or conditions contained in such mortgage or any other documents held by any

holder or any rights given to any holder as a matter of law. Upon request of the holder of a mortgage to which this Lease becomes subordinate, Tenant shall (i) execute, acknowledge and deliver to such holder an agreement to attorn to such holder as Landlord if such holder becomes Landlord hereunder, and/or (ii) execute, acknowledge and deliver to such holder an agreement not to make any payment of fixed annual rent for a period of more than one (1) month in advance. If the holder of any institutional first mortgage of the fee interest of the Shopping Center requires that this Lease have priority over such mortgage, Tenant shall, upon request of such holder, execute, acknowledge and deliver to such holder an agreement acknowledging such priority.

Notwithstanding the foregoing, if there be any other mortgage lien affecting the fee interest of the Shopping Center or a leasehold mortgage affecting an underlying ground lease, then and in any such case, Landlord shall obtain and shall deliver to Tenant, concurrently with the execution of this Lease, an agreement whereby such mortgagee executes, acknowledges and delivers to Tenant an agreement in recordable form acknowledging the priority of this Lease over any such mortgage, or non-disturbance agreement satisfactory to tenant.

26. Tenant Indemnifies Landlord.

During the term of this Lease and during any period prior to the date of occupancy by Tenant during which period Tenant has entered the Tenant's building as permitted hereunder, Tenant shall and does hereby indemnify and save Landlord and Landlord's ground lessor, if any, harmless of, from and against all costs, liabilities, damages, expenses, penalties, claims or demands of whatsoever nature, including all costs of defense and reasonable counsel fees, for personal injury, death and/or property damage occurring in or about Tenant's building or the Outside Areas or the Common Area located on lands described in Exhibit A, (only if occasioned by the conduct of truck sales or sidewalk sales by Tenant as permitted hereunder or construction activity by Tenant or its agents), including all statutory and common law liability for damage to property or injuries or loss of life sustained by any person or in or about the Tenant's building or said Outside Areas or Common Area (under aforesaid circumstances), except those which shall result, in whole or in part, directly or indirectly, from the default (including any breach of representation or warranty of Landlord under this Lease), negligence or tortious acts of Landlord or Landlord's ground lessor, if any. The foregoing sentence is intended to afford to Landlord and Landlord's ground lessor, if any, the same protection and coverage as would be provided if Tenant furnished general comprehensive liability insurance, naming Landlord and Landlord's ground lessor, if any, as additional insureds under such a policy.

27. Tenant's Right to Cure Landlord's Defaults.

In the event Landlord shall neglect to pay when due any obligations on any mortgage or encumbrance affecting title to the Shopping Center and to which this Lease shall be subordinate unless the mortgagee shall have granted Tenant non-disturbance, or shall fail to perform any obligation specified in this Lease, then Tenant may, after the continuance of any such default for seven (7) days after notice thereof by Tenant with respect to a monetary default, pay said principal, interest or other charges or cure such default with respect to any default which does not involve payment of money after continuance of such default for thirty (30) days after notice thereof by Tenant (provided that emergency repairs which are Landlord's responsibility under this Lease, and which are necessary in Tenant's reasonable judgment to protect the Demised Premises or contents thereof and/or to keep the Demised Premises and/or Common Area in a neat, clean, safe

and orderly condition, may be made without any notice to Landlord), all on behalf of and at the expense of Landlord, and do all necessary work and 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 highest rate legally permitted in Alabama but in no event to exceed eighteen percent (18%) per annum, and Tenant may, to the extent necessary, deduct the same from 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 Shopping Center 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 thirty (30) days after receipt thereof to correct or remedy such default.

28. Glass.

Tenant shall replace any and all glass damaged or broken in the Tenant's building or substitute other materials therefor, except that Landlord shall replace same if damaged or broken by fire or other casualty covered by insurance Tenant is required to maintain (unless Tenant is self-insuring at such time in which event Tenant shall replace such glass) or if such would constitute a repair which is required by reason of the negligence of Landlord or its employees or agents or a repair which Landlord is required to make under Subdivision A of Article 12.

29. Waiver of Distraint.

Landlord hereby expressly waives any and all rights granted by or under any present or future laws to levy or distrain for rent, in arrears, in advance, or both, upon all goods, merchandise, equipment, fixtures, furniture and other personal property of Tenant or any subtenant or licensee of Tenant in the Demised Premises, delivered or to be delivered thereto.

30. Unavoidable Delays.

If either party shall be prevented or delayed from punctually performing any obligation or satisfying any condition under this Lease by any strike, lockout, labor dispute, inability to obtain labor or materials or reasonable substitutes therefor, act of God, governmental restriction, regulation or control, enemy or hostile governmental action, civil commotion, insurrection, sabotage, fire or other casualty, or any other condition beyond the reasonable control of such party (other than inability to provide or obtain financing), then the time to perform such obligation or satisfy such condition shall be extended by the delay caused by such event, except for the payment of rent or other charges. If either party shall, as a result of any such event, be unable to exercise any right or option within any time limit provided therefor in this Lease, such time limit shall be deemed extended for a period equal to the duration of the delay caused by such event.

31. Adjoining or Adjacent Property.

Landlord shall promptly forward to Tenant any notice or other communication received by Landlord from any owner of property adjoining or adjacent to the Shopping Center or from any municipal or governmental authority in connection with any hearing or other administrative procedure relating to the use thereof or any adjoining or adjacent property. Alternatively, Landlord may cause Tenant to be added to any applicable tax or

other governmental rolls or lists as a party entitled to notice so Tenant directly receives tax or zoning notices.

32. Rent Notices and Payments.

A. If the ownership of the Shopping Center (or a lease of the entire Shopping Center) shall change or new or additional persons or parties become tenants-in-common of Landlord, or the name or address of the party entitled to receive the rent shall be changed as set forth in Article 32B below, Tenant may, until receipt of proper notice of such change from the assignor or party entitled to receive the rent immediately preceding such change, continue to pay the rent and additional rent to the party to which, and in the manner in which, the last preceding installment of rent was paid.

B. Notwithstanding that the Landlord is currently comprised of three individuals, Tenant shall be entitled to make all payments of rent, additional rent and all other sums due under this Lease to a single person or entity designated in writing by all persons and entities comprising Landlord. Any payments made to such designated person or entity shall be and be deemed made by Tenant to and on behalf of Landlord, and shall fully satisfy Tenant's obligation to make such payment under this Lease. In amplification of the foregoing, Tenant shall have no obligation or responsibility regarding the distribution of any such payment by such party to all persons and parties comprising Landlord, or in the event of such party's failure to properly so distribute same. Until further written notice from all persons and parties comprising Landlord, Landlord hereby designates that Tenant shall make all such payments to Griffis Realty Company, as agent for Landlord, at the address set forth on the first page of this Lease. Furthermore, Tenant need not recognize for any purpose any person or party as a new or additional tenant-in-common of Landlord unless Tenant has received written notice thereof from all persons and parties then comprising Landlord.

33. Notices.

A. Notices required under this Lease shall be in writing and deemed to be properly served if personally delivered with a receipt obtained or sent by certified or registered mail to Landlord at the last address where rent was paid or to Tenant at its principal office as set forth on the first page of this Lease, or to any subsequent address which Tenant shall designate for such purpose.

B. Notwithstanding that the Landlord is comprised of more than one individual, Tenant may (in the manner set forth in Article 33A) send a single notice to Landlord in care of the party designated to receive rent as set forth in Article 32B, and any such single notice shall be deemed properly given for all purposes under this Lease.

C. Notwithstanding anything to the contrary contained in this Lease, Landlord and Tenant acknowledge and agree that at any time Landlord is comprised of more than one individual, party or entity, any consents or notices or estoppels required or entitled to be given under this Lease by Landlord, and any modifications or amendments to this Lease, may be signed, given or executed on behalf of Landlord by two parties or entities designated in writing (the "Landlord Representatives") by all persons and entities comprising Landlord. Any such consent, notice or lease amendment or modification given or executed by the Landlord Representatives shall be deemed made by and binding upon all persons and entities comprising Landlord. Until further written notice, Mark E. Osborn and Jack J. Griffis Sr. are hereby designated Landlord Representatives. In the event of the death or dissolution of a Landlord Representative, and until a

successor is designated in writing by all persons and entities comprising Landlord, any notice or instrument (including Lease amendments) executed by the single remaining Landlord Representative shall be deemed made by and binding upon all persons and entities comprising Landlord.

34. Condition of Premises at Termination.

At the expiration or earlier termination of the Lease term, Tenant shall surrender the Demised Premises, together with alterations and improvements then a part thereof, in good order and condition, except for the following: ordinary wear and tear, repairs required to be made by Landlord pursuant to the provisions of this Lease, and loss or damage by fire, the elements and other casualty (unless, with regard to such casualty damage, a self-insurance election is in effect and Tenant is required to repair same pursuant to Article 17B). All furniture and trade fixtures installed in said building at the expense of Tenant or other occupant shall remain the property of Tenant or 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 notice of such relinquishment to Landlord, and from and after the exercise of such option the property specified in said notice shall be the property of Landlord.

35. Holding Over.

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 (provided that monthly annual minimum rent shall be increased by a factor of 1½ if Tenant holds over without Landlord's consent).

36. No Waiver.

The failure of either party to seek redress for violation of, or to insist upon the strict performance of any term, covenant or condition contained in this Lease shall not prevent a similar subsequent act from constituting a default under this Lease.

37. Waiver of Trial by Jury.

It is mutually agreed by and between Landlord and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Demised Premises and/or any claim of injury or damage.

38. Shopping Center Standards.

For the purpose of enhancing the overall appeal of the Shopping Center, Landlord acknowledges that the selection of tenants shall be consistent with maintaining a balanced and diversified grouping of retail stores. Landlord warrants, covenants and agrees that no building now or hereafter erected within the lands described in Exhibit A shall be leased or permitted to be used or occupied by Landlord or its tenants or any successors or assigns of either Landlord or its tenants, or by any subtenant, licensee or concessionaire of a tenant, for an establishment selling or exhibiting pornographic materials,



massage parlor, funeral parlor, automobile show room, auto service center (except K mart TBA), body and fender shop, car wash, amusement gallery, health spa or exercise facility, theatre or cinema, office space (other than incidental to a retail use), off-track betting parlor, bowling alley, billiard parlor, so-called "head shop", so-called "flea market" or "bazaar", discotheque, roller skating rink or for industrial or warehouse purposes (storage incidental to retail use to be permitted), or for any illegal use. Notwithstanding the foregoing, area "T" on Exhibit B may be used for any of the following: auto show room, auto service center, theatre or cinema, health spa or exercise facility, office space, bowling alley, or discotheque.

39. Hazardous Waste.

Landlord represents that it has made a thorough investigation of the physical condition of the Shopping Center, that it is fully familiar with the present and prior uses of the Shopping Center and that there are not now nor have there ever been any asbestos or any other toxic or hazardous wastes or substances incorporated in, used, generated, stored, treated or disposed on the Demised Premises or the Common Area. Landlord hereby indemnifies Tenant from and against any loss, liability, claim or expense, including, without limitation, removal, 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. In amplification and not in limitation of the foregoing, Landlord shall be solely liable to pay all expenses and costs in connection with removal of any asbestos on or in the Demised Premises not placed there by Tenant. Tenant shall be responsible to remove any asbestos or hazardous materials placed on or in Demised Premises by Tenant. Notwithstanding the foregoing the parties agree that Landlord shall not be responsible for removing and disposing of the tile flooring presently in the building which contains asbestos.

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

40. Invalidity of Certain Provisions.

If any provision of this Lease shall be invalid or unenforceable, the remainder of the provisions of this Lease shall not be affected thereby and each and every provision of this Lease shall be enforceable to the fullest extent permitted by law.

41. Choice of law.

This Lease, and the rights and obligations of the parties hereto, shall be interpreted and construed in accordance with the laws of the State in which the Shopping Center is located.

42. Memorandum of Lease.

The parties hereto have simultaneously with the execution and delivery of this Lease executed and delivered a Memorandum of Lease setting forth such information as may be necessary to constitute a "short form lease", which Landlord shall, at its sole expense, cause to be recorded within thirty (30) days following delivery of this Lease and returned to Tenant by Landlord within thirty (30) days thereafter. Landlord agrees that it will comply with the requirements of the applicable

STATE OF *Alabama* )  
COUNTY OF *Jefferson* ) ss.:

Before me, the undersigned authority, on this day personally appeared JACK J. GRIFFIS, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said partnership.

Given under my hand and seal of office on this *15* day of *Jan.* *1990*.

*Betsy Davis*  
Notary Public

STATE OF *Alabama* )  
COUNTY OF *Jefferson* ) ss.:

Before me, the undersigned authority, on this day personally appeared LINNIE MAE B. GRIFFIS, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said partnership.

Given under my hand and seal of office on this *15* day of *Jan.* *1990*.

*Betsy Davis*  
Notary Public

STATE OF *Alabama* )  
COUNTY OF *Jefferson* ) ss.:

Before me, the undersigned authority, on this day personally appeared MARK E. OSBORN, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said partnership.

Given under my hand and seal of office on this *15* day of *Jan.* *1990*.

*Betsy Davis*  
Notary Public

STATE OF *Michigan* )  
COUNTY OF *Orkland* )

Before me the undersigned authority, on this day personally appeared *M. L. Skiles*, Vice President of K MART CORPORATION, a Michigan Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

Given under my hand and seal of office on this *14<sup>th</sup>* day of *Feb.*, 199*0*.

MARY A. SCHNITZLER  
Notary Public, Oakland County, Mich.  
My Commission Expires May 20, 1991

*Mary A. Schnitzler*  
Notary Public

RIDER

TENANT'S PORTION OF REAL ESTATE TAXES

Tenant agrees to pay Tenant's portion of Real Estate Taxes ("Tax Portion") as hereinafter defined from and after the Rent Commencement Date.

A. (1) Real Estate Taxes shall mean all ad valorem real estate taxes and assessments, extraordinary as well as ordinary, levied or assessed by the lawful taxing authorities upon the Shopping Center as shown on Exhibit B (including all land, buildings, and improvements thereon). Real Estate Taxes shall not include (a) any income, franchise, gross receipts, corporation, capital levy, excess profits, revenue, inheritance, devolution, gift, estate, payroll or stamp tax, by whatsoever authority imposed or howsoever designated, (b) any tax upon the sale, transfer and/or assignment of the title or estate of Landlord which at any time may be assessed against or become a lien upon the Shopping Center, this leasehold or the rent accruing therefrom, (c) any assessments for improvements in the Shopping Center or assessments for public streets, public sidewalks, sewers, water and other installations made at governmental expense before or in connection with the initial construction and overall development of the entire Shopping Center or any part thereof, and (d) any real estate taxes or assessments on any portion of areas X, Y, W, and Z shown on Exhibit B (hereafter "Adjoining Parcels"). If any Adjoining Parcel is not separately assessed from the Shopping Center, there shall be an appropriate allocation of land and building taxes to the Shopping Center based (in the case of land taxes) on the ratios of total acreage in the Shopping Center and Adjoining Parcels not separately assessed and (in the case of taxes on improvements) on the ratios of non-separately assessed number of square feet of ground floor building areas in Adjoining Parcels and the Shopping Center.

(2) For each Real Estate Calendar (Fiscal) Tax Year from and after the Rent Commencement Date during the term hereof Tenant shall pay to Landlord Tenant's Portion of Real Estate Taxes as hereinafter set forth in Subdivision (3) of Article A of this Rider.

(3) Tenant's Tax Portion for any Real Estate Calendar (Fiscal) Tax Year shall mean the following: the product of (i) Real Estate Taxes for such Real Estate Calendar (Fiscal) Tax Year attributable to the Shopping Center, and (ii) the fraction (hereinafter called "Fraction"), the numerator of which shall be the number of square feet of ground floor area of the Tenant's building (excluding the Outside Area) at the end of such Real Estate Calendar (Fiscal) Tax Year, and the denominator of which shall be the number of square feet of ground floor area of all the buildings in the Shopping Center (including the Tenant's building but excluding the Outside Areas) at the end of such Real Estate Calendar (Fiscal) Tax Year. For the purposes hereof, any excess of such Real Estate Taxes for any such Real Estate Calendar (Fiscal) Tax Year, attributable to improvements made and assessed during such Real Estate Calendar (Fiscal) Tax Year, shall not be included in making such computation as aforesaid. The parties agree that at the commencement of the term hereof the Fraction (including the projected K mart Expansion) will be 54.5%.

Notwithstanding the formula set forth in Subdivision (3) of Article A hereof, if Tenant's building shall be separately assessed (and the building upon the Demised Premises shall be deemed to be separately assessed if the same is separately assessed according to the Real Estate Tax bill, the assessor's records or written assessor's certification), then Tenant's Tax Portion for any Real Estate Calendar (Fiscal) Tax Year that Tenant's building shall be separately assessed shall be the sum of (i) Real Estate Taxes upon the Tenant's building and (ii) the product of (a) Real Estate Taxes for such Real Estate Calendar (Fiscal) Tax Year attributable to only the land comprising Phase I (including Common Areas but excluding all buildings and all land not comprising Common Areas which is separately assessed, hereinafter the "Land") and (b) the Fraction.

(4) Where bills are rendered for different Real Estate Taxes (i.e., county, school, city or the like) the measurement of Tenant's liability under the provision shall be separately made, according to the tax liability stated on each bill. That is to say, the liability of Tenant under this provision shall be computed according to the tax bill presented for the applicable tax period, as compared with the tax bill for the same classification of taxes for the prior Calendar (Fiscal) Tax Year.

(5) Where the applicable tax bill is not available prior to the end of the term hereof, then the aforesaid adjustment shall be made, tentatively, on the basis of the last year's taxes, and the amount due shall be treated as an addition to the minimum rent for the last month of the term of this Lease; and final adjustment shall be made between Landlord and Tenant promptly after Landlord shall have received the tax bill for such period.

B. Landlord shall not pay any Real Estate Taxes before they are due.

C. Landlord shall submit to Tenant a bill for Tenant's Tax Portion, together with true copies of the receipted tax bill and a statement of the facts and information needed to calculate the Tenant's Tax Portion, as soon as practicable after the end of each Real Estate Calendar (Fiscal) Tax Year, and if the same is correct, Tenant shall pay Tenant's Tax Portion to Landlord as additional rent within thirty (30) days after Tenant receives said bill and statement.

D. If, by law, any Real Estate Taxes may, at the option of the taxpayer, be paid in installments (whether or not interest shall accrue on the unpaid balance thereof), Landlord shall exercise the option to pay the same in installments and shall pay the installments as the same respectively become due and before any fine, penalty, interest or cost may be added for non-payment thereof, but Landlord shall not pay any installment before it is due. Only installments becoming due during the term of this Lease from and after the Rent Commencement Date shall be included in Real Estate Taxes for the computation of Tenant's Tax Portion, and any installments for a Real Estate Calendar (Fiscal) Tax Year, a part of which is included within the term of this Lease after the Rent Commencement Date and a part of which is included in a period of time before the Rent Commencement Date or after the Expiration Date (or sooner expiration or termination date), shall be equitably adjusted between Landlord and Tenant as of the Rent Commencement Date or the Expiration Date (or sooner expiration or termination date), as the case may be, for the purpose of computing Tenant's Tax Portion.

E. (1) If Landlord shall fail or refuse, upon the request of Tenant, to take any necessary steps to contest the validity or amount of the assessed valuation or of the Real Estate Taxes for any Real Estate Calendar (Fiscal) Tax Year, Tenant may undertake, by appropriate proceeding in the name of Landlord or Tenant, to contest the same. Within a reasonable time after demand therefor, Landlord shall execute and deliver to Tenant any documents required to enable Tenant to prosecute any such proceedings. Landlord shall inform Tenant, in time to permit Tenant to undertake such contest, of all pertinent data required to undertake such contest.

(2) If Tenant shall obtain for Landlord a remission or a refund of all or any part of the Real Estate Taxes for any Real Estate Calendar (Fiscal) Tax Year, Landlord shall promptly reimburse Tenant out of such remission or refund for all of Tenant's costs and expenses in connection therewith, including, but not limited to, attorneys' fees. If Landlord or Tenant shall obtain a remission or a refund of all or any part of the Real Estate Taxes for any Real Estate Calendar (Fiscal) Tax Year, Landlord shall promptly refund to Tenant (or credit Tenant with) a proportionate share (based upon the Fraction) of the remission or refund, such proportionate share to be calculated after deduction of actual costs and expenses incurred in obtaining such remission or refund.

F. Any and all payments of Tenant's Tax Portion in any Lease Year during the term of the Lease in excess of the Base Real Estate Taxes (as hereinafter defined) shall be deductible from and will be offset against, and will be withheld on a non-cumulative basis from the additional rentals, if any, generated and payable pursuant to the provisions of Article 4 of this Lease for such Lease Year. "Base Real Estate Taxes" shall mean the aggregate Real Estate Taxes paid by Landlord during the Lease Year in which the K mart Building (including the K mart Expansion) is first assessed as a completed unit.

\* \* \* \* \*

Attached to and forming part of Lease dated as of \_\_\_\_\_, by and between JACK J. GRIFFIS, LINNIE MAE B. GRIFFIS and MARK E. OSBORN, as Landlord, and K MART CORPORATION, as Tenant, covering premises situated at Bessemer, Alabama.

Initialed by Landlord:      Initialed by Tenant:





RIDER

TENANT'S COMMON AREA CHARGE

Tenant agrees to pay Tenant's CAM Reimbursement as hereinafter defined and set forth from and after the Rent Commencement Date.

A. As used in this Rider, the following terms shall have the following meanings:

(1) Tenant's "Common Area charge" shall mean, for any period, the product of (a) the actual cost and expense to Landlord for the maintenance and operation and public liability insurance of the Common Area (hereinafter called "Common Area costs") for such period, and (b) the Fraction. The Common Area costs shall be limited to amounts paid by Landlord in respect of the Common Area for the work Landlord is required to do and the items Landlord is required to furnish under subdivision B of Article 9, and the insurance Landlord is required to furnish under subdivision G of Article 9, not including any amounts for removal of rubbish of individual tenants of the Shopping Center. The Common Area costs shall not include Real Estate Taxes, casualty insurance premiums, capital expenditures (other than parking lot resurfacing which shall be a Common Area cost), office overhead, salaries of persons whose functions extend beyond the care of the Common Area or profit for Landlord on any Common Area costs, any costs of Landlord in performing Landlord's Work set forth in Exhibit D, or any costs and expenses for maintenance, repairs, or construction on or to the Adjoining Parcels. If at any time there shall be any Common Area costs which cover both the Adjoining Parcels and the Shopping Center, same shall be prorated (to determine which portion thereof shall be Common Area costs chargeable to Tenant hereunder) based on the ratio of the total Common Area acreage covered by any such cost. The Common Area costs shall be allocated to each Lease Year without any duplication, all in accordance with generally accepted accounting principles.

(2) The term "Base Common Area Charge" shall mean the Common Area charge for the first Lease Year, regardless of whether or not same was fully payable by Tenant pursuant to Section B(1) of this Rider.

(3) The term "Base CAM Reimbursement Amount" shall mean the amount of the Tenant's CAM Reimbursement for the first Lease Year payable pursuant to Section B(1) of this Rider.

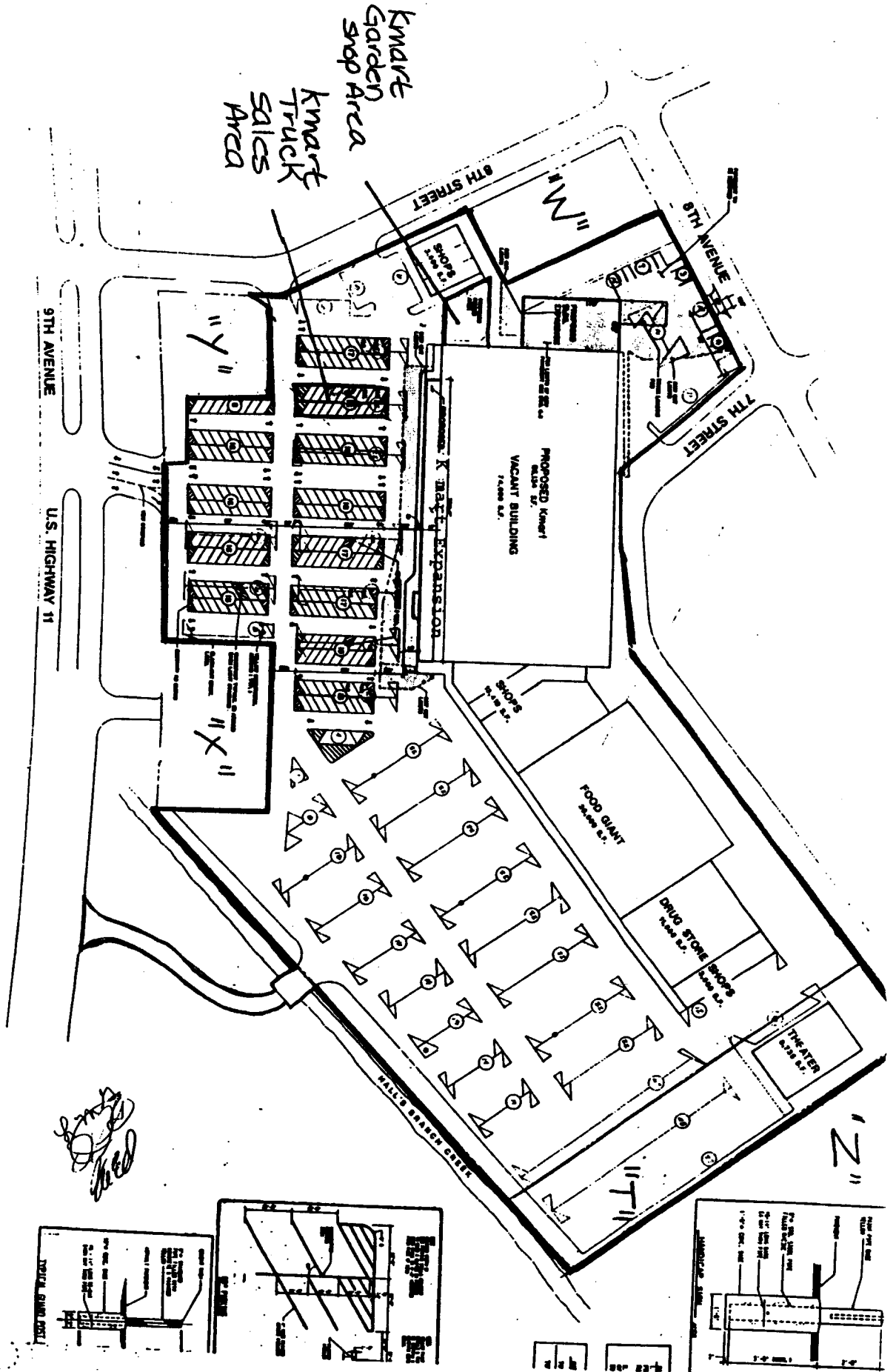
B. (1) Tenant's CAM Reimbursement for the first Lease Year of the term hereof shall be the lesser of (a) the actual Common Area charge for such first Lease Year and (b) the sum of TWENTY FIVE THOUSAND SEVEN HUNDRED THIRTY TWO DOLLARS AND 50/100 (\$25,732.50).

(2) Tenant's CAM Reimbursement for each Lease Year subsequent to the first Lease Year shall be the sum of (a) the Base CAM Reimbursement Amount plus (b) the amount, if any, by which (i) the actual Common Area charge for such Lease Year exceeds (ii) the Base Common Area charge. By way of illustration of the foregoing, if in the first Lease Year the Tenant's Common Area charge was \$25,000 and in the second Lease Year the Tenant's

EXHIBITS

- A. Legal Description of Shopping Center
- B. Plot Plan
- C. Commencement of Term Agreement
- D. Landlord's Work
- E. Title Exceptions
- F. Tenant's Store Plan
- G. Letter of Credit
- H. Exclusive Clauses





BERKOWITZ  
LEFKOVITS  
ISOM &  
KUSHNER

A PROFESSIONAL CORPORATION

CARRISA J. ALLEN  
DIRECT DIAL NO.: (205) 328-0480 x485  
E-MAIL: CALLEN@BLIK.COM  
WEBSITE: WWW.BLIK.COM

March 14, 2002

Kmart Corporation  
C/o: Trumbull Services  
P.O. Box 426  
Windsor, Connecticut 06095

Re: *In re: Kmart Corporation (02-B-02474)*

Dear Sir/Madam:

Enclosed for filing in the above-referenced matter is the original and two copies of a Proof of Claim. Please return a "filed" copy of same in the enclosed self-addressed stamped envelope.

Thank you for your assistance.

Sincerely,



Carrisa J. Allen, PLS  
Secretary to James H. White

:cja  
Enclosures