

of property taxes and related expenses for the period January 1, 2001 through December 31, 2001, and coming due January 31, 2002. At the time of this filing this claim is contingent in the expectation that the Debtor will pay all such taxes and penalties. Claimant may elect to advance such sums in order to stop the accrual of penalties in which case this claim will be amended.

6. As of this date, the Debtors have not assumed and assigned or rejected the Lease Agreement. Pursuant to 11 U.S.C. §365(d)(10), the Debtors must assume and assign or reject the unexpired Lease Agreement on or before March 22, 2002. If the Lease Agreement is rejected by the Debtor Claimant reserves the right to amend this claim to add damages due under 11 U.S.C. § 502(b)(6).

7. No judgment has been rendered on this claim.

8. NW-Parmer, Ltd. reserves the right to amend this Original Proof of Claim.

Dated: March 11, 2002.

Respectfully submitted,

NW-PARMER, LTD.

Carrie L. Holt

Endeavor Real Estate Group, LLC,

Property Manager

By Carrie L. Holt

PENALTY FOR PRESENTING FRAUDULENT CLAIM: Fine of no more than \$500,000.00 or imprisonment for not more than five (5) years or both - Title 18, U.S.C. §§ 152 and 3571.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

IN RE:	§	CASE NO. 02-B02474
	§	(Jointly Administered)
KMART CORPORATION, <u>et al.</u> ,	§	Chapter 11
	§	Chief Judge Susan Pierson Sonderby
	§	
Debtors.	§	

CERTIFICATE OF SERVICE

This is to certify that pursuant to the Omnibus Order filed in this cause and dated January 26, 2002, a true and correct copy of the Proof of Claim filed by NW-Parmer, Ltd. in the above-styled and numbered proceeding was mailed the 15th day of March, 2002, by first class mail to Debtor Kmart Corporation, 310 West Big Beaver Road, Troy, MI 48084; Debtor's attorney of record, John Butler, Skadden Arps Slate Meagher & Flom, 333 West Wacker Drive, Suite 2100, Chicago, IL 60606; the Office of United States Trustee, c/o Kathryn Gleason, 227 West Monroe Street, Suite 3350, Chicago, IL 60606; and Trumbull Services, P.O. Box 426, Windsor, CT 06095, by certified mail, return receipt requested.

Respectfully submitted,

LAW OFFICES OF MICHAEL DEITCH
& ASSOCIATES, P.C.
800 Rio Grande
Austin, TX 78701
512/474-1554
512/474-1579 (telecopy)
mike.d@dhpc-law.com (e-mail)

By


MICHAEL DEITCH

STATE BAR NO. 05644550

Attorney for NW-PARMER, LTD.
Through its Property Manager,
Endeavor Real Estate Group, LLC

TABLE OF CONTENTS

PAGE

I. DEFINITIONS

1.01	Base Parcel	2
1.02	Builders Square Building	2
1.03	Builders Square Parcel	2
1.04	Building Areas	2
1.05	Common Areas	2
1.06	Developer	2
1.07	Development Agreement	2
1.08	Existing Shopping Center Parcel	3
1.09	Floor Area	3
1.10	Future Shopping Center Parcel	3
1.11	Kmart	3
1.12	Mortgage	3
1.13	Mortgagee	3
1.14	Owner	3
1.15	Parcel	3
1.16	Person	3
1.17	Pro Rata Share	3
1.18	Responsible Owner	4
1.19	Shopping Center	4
1.20	State	4

II. LAND USE

2.01	Permitted and Prohibited Uses	4
2.02	No Interference with Common Areas	5
2.03	Conformity to Site Plan	5

III. COMMON AREAS

3.01	Construction of Improvements on Common Areas.....	6
3.02	Parking Areas	6
3.03	Limitation of Construction Obligations	6
3.04	Rules for Use of Common Areas	6
3.05	Grant and Declaration of Reciprocal Easements	7
3.06	Temporary Use of Common Areas During Construction and For Maintenance and Repair	7
3.07	Barriers and Traffic Control	7
3.08	Easement for Minor Encroachments	7
3.09	No Easements Beyond Shopping Center	8

11512 1012

REAL PROPERTY RECORDS
Travis County

EXHIBIT

1

PAGE

IV. OPERATION AND MAINTENANCE OF COMMON AREAS		
4.01	Responsibility for Maintenance	8
4.02	Reimbursement for Common Area Expenses	9
4.03	Right to Take Over Common Area Maintenance	12
4.04	Taxes	12
4.05	Common Area Liability Insurance	13
4.06	Right of Responsible Owners to Cure	13
4.07	Failure to Pay Common Area Costs	13
V. UTILITY EASEMENTS		
5.01	Separate Utility Lines	14
5.02	Common Utility Lines	14
5.03	Location of Easements	14
5.04	Installation, Maintenance and Repair	14
5.05	Relocation	15
VI. BUILDING DESIGN AND CONSTRUCTION		
6.01	Building Design and Construction	15
6.02	Building Height	16
6.03	Automatic Sprinklers	16
6.04	Location of Buildings	16
6.05	Intentionally Omitted	16
6.06	Maintenance of Buildings	16
6.07	Maintenance of Vacant Building Areas	16
6.08	Insurance on Buildings; Restoration	17
6.09	Waiver of Subrogation	17
6.10	Restoration	17
VII. SIGNS		
7.01	Permitted Signs	18
7.02	Pylon Sign	18
7.03	Shopping Center Name	19
VIII. EMINENT DOMAIN		19
IX. MORTGAGES SUBORDINATE TO AGREEMENT		19

11512 1013

REAL PROPERTY RECORDS
Travis County, Texas

PAGE

X. NATURE OF AGREEMENT

10.01	Obligations of Agreement	19
10.02	No Dedication to Public	20
10.03	Amendment, Modification or Termination	20
10.04	Term of Agreement	21

XI.	APPROVALS	21
-----	-----------------	----

XII. REMEDIES

12.01	Default of Owner	21
12.02	Failure to Pay Taxes or Maintain Insurance	22
12.03	Other Remedies	22
12.04	Liens	22
12.05	No Waiver	23
12.06	No Termination For Breach	23

XIII. MISCELLANEOUS

13.01	Severability	23
13.02	Estoppel Certificate	24
13.03	Governing Law	24
13.04	Headings	24
13.05	No Partnership	24
13.06	Notices	24
13.07	Mechanic's Liens	25
13.08	Termination of Prior Agreement.....	25

Exhibit A-1	Existing Shopping Center Parcel
Exhibit A-2	Builders Square Parcel
Exhibit A-3	Future Shopping Center Parcel
Exhibit B	Site Plan

Parties

THIS LEASE made and entered into as of this *14th* day of *March*, 1989, between Parmer Point, Ltd. a Texas Limited Partnership having its principal office at 301 Congress Ave., Austin, Texas, 78701 (herein referred to as "Landlord"), and K MART CORPORATION, a Michigan corporation having its principal office at 3100 West Big Beaver Road, Troy, Michigan 48064 (herein referred to as "Tenant"),

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

Demised Premises

1. Landlord does demise unto Tenant and Tenant does take from Landlord for the lease term the following property: Tenant's completed building (designated K mart), together with site improvements to be constructed as hereinafter specified by Landlord at its expense together with land comprising not less than eight and three tenths (8.3) acres described in Exhibit "A" Parcel "A" (K mart demised area), attached hereto and made a part hereof, said improvements being a part of the Parmer Point Shopping Center and situated in the City of Austin, County of Travis, State of Texas; said building to be in the location depicted on Exhibit "B" attached hereto and made a part hereof, and of the following dimensions:

K mart store: 361'4" in width by
239'4" in depth.....86,479 square feet.

Plus Garden Shop with approximate dimensions of 50' x 100'.

Said land, completed building and site improvements, together with all licenses, rights, privileges and easements, appertenant thereto shall be herein collectively referred to as the "demised premises".

Term

2. The term of this lease shall commence upon the "date of occupancy by Tenant", as that term is defined in Article 11 hereof, and shall terminate upon such date as shall be Twenty Five (25) years from the last day of the month in which said date of occupancy by Tenant shall occur; provided, however, the term of this lease may be extended as provided in Article 13 hereof. The phrase "lease term", as used in this lease, shall be the term of this lease and any extension thereof pursuant to said Article 13.

Annual Minimum Rental

3. Tenant shall, during the lease term, pay to Landlord, at such place as Landlord shall designate in writing from time to time, an annual minimum rental of Four Hundred Fifty Four Thousand and Fifteen DOLLARS (\$454,015.00), unless abated or diminished as hereinafter provided, in equal monthly installments on the first day of each month, in advance, commencing upon the first day of the lease term; provided, however, in the event the first day of the lease term shall not be the first day of a calendar month, then the rental for such month shall be prorated upon a daily basis.

Additional Rental

4. In addition to the aforesaid annual minimum rental, with respect to any lease year during the lease term in which Tenant's "gross sales", as hereinafter defined, shall exceed the sum of SIXTEEN Million DOLLARS (\$16,000,000.00), Tenant shall pay to Landlord as additional rental an amount equal to one percent (1%) of gross sales exceeding SIXTEEN MILLION DOLLARS (\$16,000,000.00).

Said additional rental shall be paid on or before the thirtieth (30th) day following the end of each "lease year". For the purposes of this lease, a "lease year" shall be each successive period of twelve consecutive calendar months from the last day of the month in which said lease term shall commence. Sales for any period preceding the first lease year shall be included in gross sales reported for the first lease year. Tenant shall on or before the thirtieth (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.

Should Tenant at its option operate its fountain and lunch counter prior to opening for other business, such operation shall not be an acceptance of the demised premises, or an acknowledgment that the representations and warranties of Article 12 shall have been fulfilled, or an opening for business under Article 11 or any other provision of this lease, but sales from such operation shall be included in Tenant's reported gross sales for the first 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" Parcel "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 by any occupant of said demised premises, and any and all occupational sales taxes and other taxes levied upon, assessed against, based upon, or measured by (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, retailers' occupational tax, gross receipts tax or excise tax; provided, however, said taxes to be excluded from gross sales shall not include any net income tax, franchise, or any other tax not levied upon or computed upon gross sales or gross receipts, or any portion thereof; provided further, said taxes to be excluded from gross sales shall be excludable regardless of whether imposed under any existing or future orders, regulations, laws, statutes or ordinances;

- (c) Receipts from cigarettes, lockers, stamp machines, public telephones, pay toilets, "kiddie rides", money orders and all licenses sold to the public;
- (d) Service and interest charges for time payment accounts and charge accounts;

Should the Tenant at any time elect to discontinue the operation of its store, the Tenant shall give to the Landlord notice in writing of its intention so to do and in such event the Landlord shall have one option, to be exercised by notice in writing given to the Tenant within One Hundred Twenty (120) days after the date of mailing of the Tenant's aforesaid notice to the Landlord, to cancel and terminate this lease. If the Landlord exercises its said option, this lease shall cancel and terminate on the last day of the month next following the end of said One Hundred Twenty (120) day period and the Tenant shall be released from any further liability under this lease. An assignment or subletting shall not be construed to be a discontinuance of Tenants operation of it's store.

Should the Landlord fail to exercise its said option and should the Tenant at any time thereafter discontinue the operation of its said store then and in any such event, anything in this lease to the contrary notwithstanding, it is hereby mutually agreed that the rent which Tenant shall pay to the Landlord during the remainder of the term of this lease shall be the rent more particularly set forth in said Article 3, and the word "minimum" in said Article 3 shall be deemed deleted. Upon the discontinuance of the operation of said store, all of the covenants and provisions contained in the preceding paragraph of this article shall be of no further force and effect.

Notwithstanding the provisions of the two preceding paragraphs, Tenant shall be entitled, at any time prior to the discontinuance of the operation of its store and the delivery of the notice to Landlord of its election to discontinue its operation (as hereinabove provided) to assign this lease or sublet the whole or any part of the demised premises pursuant to Article 21 hereof; subject, however, to the terms and conditions of this lease including the provisions of Article 4 hereof. Any such assignment or subletting shall not be construed to be a discontinuance of Tenant's operation of its store.

In the event Landlord shall fail to exercise its option to cancel and terminate this lease after receiving notice from Tenant of its intention to discontinue the operation of its store (as hereinabove provided) and Tenant thereafter assigns this lease or sublets the whole or any part of the demised premises pursuant to Article 21, the rent which Tenant or Tenant's assignee shall be obligated to pay to Landlord during the remainder of this Lease shall be the rent more particularly set forth in Article 3 and the word "minimum" in said Article 3 shall

be deemed deleted and all the provisions contained in the preceding paragraphs of this Article 4 shall be of no further force and effect.

Real
Estate
Taxes

5. Tenant shall pay and discharge prior to delinquency all ad valorem real estate taxes, assessments, and other governmental charges which shall be levied against the taxable premises during the lease term, excluding therefrom payment of assessments which are incurred or levied as a result of Landlord's activity in developing the demised premises for Tenant's occupancy.

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

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

The amount, if any, by which the ad valorem real estate taxes and assessments payable hereunder during each lease year exceeds the ad valorem real estate taxes and assessments payable during the first full year that the demised premises are assessed as a completed K mart store shall be hereinafter referred to as an "excess tax payment". All excess tax payments shall be deductible by Tenant from additional rentals, as defined in Article 4, due and payable for such lease year.

The taxable premises, as defined below, shall be separately assessed if practicable from any contiguous lands and from any additional lands and improvements incorporated into the demised premises in the future.

The Tenant shall have the right to participate in all negotiations of tax assessments. Tenant shall have the right to contest the validity or the amount of any tax or assessment levied against the taxable premises by such appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as Tenant may deem appropriate; provided, however, Tenant shall take no action which will cause or allow the institution of any foreclosure proceedings or similar action against the demised premises. Landlord shall reasonably cooperate in the institution and prosecution of any such proceedings initiated by the Tenant and will execute any documents reasonably required therefor.

Should the Landlord institute proceedings to contest the validity or the amount of any tax or assessment levied against the taxable premises, the Tenant will reasonably cooperate in such proceedings.

Should any of the proceedings referred to in the preceding two paragraphs of this Article 5 result in reducing the total annual real estate tax and assessment liability against the taxable premises, the Tenant shall be entitled to receive all refunds paid by the taxing authorities. After payment of all of Landlord's and Tenant's expenses incurred in any such proceeding in which a refund is paid, the Tenant shall pay to the Landlord either the balance of such refund or, alternatively, Tenant shall pay to the Landlord that part of the excess tax payment which may have been deducted from additional rent in the tax year for which the refund was granted, whichever amount shall be the lesser. Any balance of said refund remaining after such payment to Landlord shall belong to the Tenant. If no refund shall be secured in any given proceeding, the party instituting the proceeding shall bear the entire cost.

The term "taxable premises", as used in this lease, shall be that certain land described in Exhibit "A" Parcel "A" together with such buildings and other improvements required by Tenant to be constructed thereon by Landlord under the terms of this lease.

New
Building by
Landlord

6. Tenant's said buildings and site improvements shall be completed and delivered to Tenant promptly and with due diligence. If the performance by Landlord of any of its obligations hereunder is delayed by reason of the act or neglect of Tenant, act of God, strike, labor dispute, boycott, governmental restrictions, riot, insurrection, war, catastrophe, or act of the public enemy, the period for the commencement or completion thereof shall be extended for a period equal to such delay. Landlord warrants that a general contract for construction of said buildings and improvements referred to in Articles 1 and 12 hereof shall be let, rough site grading shall be completed and foundations and footings commenced not later than Sept. 1, 1989. If for any reason whatever Landlord shall fail to comply fully with this warranty, Landlord shall so notify Tenant in writing and in such event Tenant shall have, in addition to other remedies which may be available to it by law or otherwise, the option to terminate this lease within sixty (60) days thereafter by notice to Landlord; provided, further, in the event that, regardless of the reason therefor, said buildings and site improvements shall not have been completed in accordance with working drawings and specifications prepared by Landlord as approved in writing by Tenant's Construction Department, and possession thereof tendered to Tenant prior to August 1, 1990, then Tenant shall, at any time thereafter, have the further option of terminating this lease by notice to Landlord. Notwithstanding anything to the contrary herein contained, in the event that the lease term shall not have commenced prior to such date as shall be seven (7) years from the date of this lease, then this lease shall be automatically terminated without further act of either party hereto.

Drawings
and
Specifi-
cations

7. Tenant's said buildings and site improvements shall be constructed by Landlord, at its sole cost and expense, in accordance with the working drawings and specifications prepared by Landlord which shall, with respect to standards of construction and division of responsibility for supplying materials and equipment, substantially satisfy the provisions of Tenant's typical store drawings and specifications, prior receipt of which Landlord hereby acknowledges and which are identified as Set No K-0334, containing such additions, changes and modifications as is more particularly set forth in this certain letter dated September 21, 1988, respectively, written by Mr. Steve Li, Manager Design Division, K mart Corporation to Trammell Crow

Company, Mr. Mark Palmer, and a copy of which is attached and made a part hereof and marked Exhibit "C".

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

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

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

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

Subsequent to approval of the typical drawings and specifications, in the event that criteria changes to the lease shall be requested by Tenant, which result in a savings to the Landlord in construction costs, then, Landlord shall pay Tenant an amount equal to the savings (or, at Landlord's option on annual minimum rental shall be reduced by an amount equal to said amount). However, in the event criteria changes are requested by Tenant which result in additional construction costs to Landlord, Tenant shall pay said charges if reasonable.

Guarantee
of
Materials

8. Landlord shall unconditionally guarantee all work performed by or for the Landlord in the construction of Tenant's buildings and site improvements against defective workmanship and materials for a period of one (1) year from commencement of lease term or date of final acceptance by Tenant, whichever is later, unless a different period of time is expressly stated under section of the criteria documents and/or job specifications. Landlord shall assign to Tenant any and all guarantees of workmanship and materials which it may receive as it relates to Tenant's repair & maintenance responsibilities under this Lease. If Landlord defaults under this Lease in areas of landlord responsibilities then Landlord shall assign its guarantees of workmanship & materials which it may receive to Tenant.

Advance Possession for Fixturing and Merchandising

9. For a period of sixty seven (67) days after completion of Tenant's building by Landlord, as set forth in Article 11 (b), Tenant shall have the privilege, rent free of entering said buildings for the purposes of installing stockroom equipment and salesfloor trade fixtures, storing merchandise, training personnel and other pre-opening activities. The Landlord's completion of the building shall be construed to mean the building is substantially complete except connections to tenants equipment, i.e. permanently enclosed, completely decorated inside and out, floor covering installed, electrical system complete, mechanical systems functioning on controls, toilet facilities complete for both sexes, fire protection system including alarms complete.

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

Parking and Other Common Areas

10. Prior to commencement of the lease term, Landlord shall construct, in accordance with said working drawings and specifications approved by Tenant, on the premises described in Exhibit "A" Parcel "A" (K mart demised area) (including lot 2), all of the sidewalks, service drives, parking areas, driveways, streets, curbs, directional signs (not Tenant's pylon) and related improvements, substantially as shown on said working drawings and specifications (all of which improvements shall hereinafter, along with the land thereon constructed, be referred to as the "common areas").

Landlord shall also construct or cause to be constructed upon certain property or rights-of-way contiguous to the premises described in Exhibit "A" Parcel "B" (Landlord area), all sidewalks, driveways, streets, curbs, acceleration, deceleration and stacking lanes, traffic controls, and signals, directional signs, parking areas and related improvements in accordance with said working drawings and specifications and the requirements of any governmental bodies. Notwithstanding the aforesaid Landlord will not be required to construct the aforesaid improvements in outlot 1 and 2 as described on exhibit "B".

Landlord covenants and represents that at the commencement of the lease term, there shall be adequate sidewalks, driveways, roadways and entrances for automotive and pedestrian ingress and egress to and from the demised premises and adjacent public streets and highways, as shown on said working drawings and specifications.

Landlord further covenants that the aggregate area in the center depicted by Exhibit "B" shall provide for the parking of automobiles sufficient to accommodate not less than Five Hundred Thirty Six (536) automobiles on basis of arrangement depicted on Tenant's working drawings, specifications and exhibit "B" during the lease term.

At least sixty-seven (67) days prior to the commencement of the lease term, Landlord shall provide in accordance with said working drawings and specifications as approved by Tenant and as shown on Exhibit B all of the sidewalks, service drives, parking areas and entrances, from adjoining public streets to the extent necessary to permit receiving and delivering of fixtures, merchandise and other property and to permit parking for persons involved in the pre-opening activities of the Tenant

Landlord shall not use the remainder of the property it owns in the Shopping Center for a movie theater, night club, disco, health spa, bowling alley or any other use that requires a disproportionate amount of parking. Notwithstanding the aforesaid Landlord may lease to a health spa no larger than 2,000 square feet as long as said health spa shall not be within 200 feet from the K mart demised premises.

Liability Insurance. During the lease term, Landlord at its sole expense shall keep Tenant insured against all statutory and common law liabilities for damage to property or injuries, including loss of life, sustained by any person or persons within or arising out of said common areas, whether caused by Tenant's negligence or otherwise, in a policy or policies with minimum coverage of Five Hundred Thousand Dollars (\$500,000) with respect to injury to any one person and One Million Dollars (\$1,000,000) with respect to any one accident or disaster, and One Hundred Thousand Dollars (\$100,000) with respect to damage to property. All such policies shall bear endorsements to the effect that Tenant is named an additional insured and that Tenant shall be notified not less than five (5) 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 upon written request therefor.

Indemnification. Landlord further agrees at its sole expense to defend, indemnify and hold Tenant (and all of its officers, agents and employees) harmless against any and all liabilities for damages for claims arising out of said common areas or Tenant's use thereof, by reason of any negligence or willful misconduct on the part of Landlord.

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

Should Tenant, at any time, utilize portions of the common areas for outdoor shows, entertainment or such other uses which in Tenant's judgment tend to attract the public, Tenant shall give Landlord notification of such intended use, a reasonable time in advance thereof, and on request supply Landlord with reasonable proofs of adequate insurance or indemnification against damage to property, injuries to persons and loss of life sustained in connection therewith. In addition, Tenant shall be responsible for any physical damage to said common areas resulting from said use. Rent, if any, from such use shall be included as part of "gross sales" under Article 4 hereof. Such uses shall be conducted in such manner as not to unreasonably interfere with traffic flow or parking in the Shopping Center or with access in the premises or other Tenants.

Store
Opening

11. The term "date of occupancy by Tenant", as used in this lease, shall be the first to occur of the following two dates: (a) the date upon which Tenant shall open for business, or (b) the date which shall be sixty-seven (67) days (plus a period of time equal to any delays due to conditions beyond Tenant's control) after the date upon which (i) Tenant's buildings and site improvements shall be completed in accordance with said working drawings and specifications and the possession thereof shall be tendered to Tenant, and (ii) all of the representations and warranties set forth in Article 12 shall be fulfilled; except, however, notwithstanding anything to the contrary in this lease contained, in the event said date of occupancy shall occur during the period between November 1 and the last day of February, the lease term shall not commence until March 1 unless

Tenant shall elect to open for business prior to such date. Tenant shall have the option to open for business prior to the completion of the matters set forth in subdivisions (1) and (2) of this Article 11, and in the event of the exercise of such option, Landlord shall complete said buildings and site improvements as expeditiously as possible; provided, however, if Landlord shall have failed to complete said buildings and improvements according to the said working drawings and specifications within ninety (90) days after Tenant opens for business, Tenant shall thereafter at any time be privileged, but not obligated, to complete, correct, or remedy in all or part any such deficiency, and the cost thereof shall be deducted from the rentals due under this lease, without waiver of Tenant's other remedies hereunder. K mart agree's to fixture the building and to open the store for business subject to the aforesaid terms. However, notwithstanding K mart's obligation to open its store for business that same shall not be construed to be a continuing obligation to operate its store during the lease term including options.

Landlord's
representations
and
warranties

12. Landlord represents, warrants and covenants that it shall, prior to commencement of the lease term, complete the buildings and site improvements substantially in accordance with the site plan depicted on said Exhibit "B", including completion of said common areas in accordance with the provisions of Article 10 hereof. Landlord further covenants that it will not erect any buildings or other structures on the land described in Exhibit "A" Parcel "B" except as shown on said Exhibit "B".

Landlord and Tenant agree that the height of any building on the outlot(s) shall at no time be greater than seven (7) feet lower than the highest portion of the K mart store.

Landlord further represents, warrants and covenants that the land described in Exhibit "A" Parcel "A" will, at the time of the commencement of construction by Landlord and at the time of the commencement of the lease term, be properly zoned for Tenant's intended use, and that all necessary governmental consents, permits and approvals for such use shall have been obtained. Further, Landlord shall deliver to Tenant a Certificate of Occupancy prior to commencement of the lease term.

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

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

and expense, or, alternatively, Tenant shall have an option to terminate this lease by notice to Landlord, which notice shall state an effective date of termination of not less than sixty (60) days from the date of such notice.

Options
to Extend
Lease

13. (a) Tenant shall have Ten (10) 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 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 nonexercise by Tenant of any or all of the foregoing options, Tenant shall have, unless the last day of the lease term shall be January 31 of any year, the option to extend (or further extend, as the case may be) the term of this lease for such period of time as shall cause the last day of the term of this lease to be the January 31 next succeeding the date upon which the term of this lease would expire but for the exercise of this option. This option shall be exercised by 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 this 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.

First
Refusal to
Purchase
Option

14. Omitted

Repairs and
Maintenance

15. Tenant shall make and pay for all maintenance, replacement and repair necessary to keep the demised premises in a good state of repair and tenantable condition (including store front, windows, painting door closure devices, window frame, door frame, molding locks and hardware), except for the following maintenance, replacement or repair which shall remain the Landlord's sole responsibility:

- (a) all maintenance, replacement and repair to the roof, outer walls and structural portion of the buildings which shall be necessary to maintain the buildings in a safe, dry and tenantable condition and in good order and repair; and
- (b) all repairs, maintenance or replacement of or to the utility services to the building and any underground storm sewers, sanitary sewers, water lines or electrical lines under the parking areas, service drives, streets, sidewalks, driveways, entrances; and
- (c) all repairs and replacement (exclusive of sweeping, striping and snow and ice removal) necessary to maintain all driveways, sidewalks, street and parking areas free of all settling, clear of standing water, and in a safe, sightly and serviceable condition, free of chuck holes, fissures and cracks.

Notwithstanding the foregoing provisions of Article 15 herein set forth, Landlord shall contract for sweeping, striping and snow removal for the parking areas, driveways, sidewalks and

streets of the premises and maintain same in a clean, safe, sightly and serviceable condition. The Landlord shall further maintain all landscaped areas.

Tenant shall pay the Landlord its pro rata share of the costs of maintaining and repairing the common areas and common facilities. Tenant's said share shall be based upon the ratio that the ground floor area of Tenant's building bears to the total gross ground floor area contained in all buildings depicted on Exhibit "B" and actually erected on any portion of the land described in Exhibit "A", Parcel "B".

For purposes of this Article, the costs of maintaining the common areas and common facilities shall include without limitation the following: all amounts paid for (1) cleaning, and restriping the parking areas, sidewalks and driveways; (2) maintenance repair and replacement of planted or landscaped areas; (3) lighting of parking lot including repair and replacements; (4) repairing but not replacement of the parking lot and (5) wage and salaries of persons directly and actually performing services described herein. The cost of maintaining the common areas and common facilities shall not include real estate taxes, capital expenses, office overhead, permit fees, rubbish removal for other tenants, or electricity charges for the remainder of the shopping center in the event that the parking lot lights for Tenants demised premises are separately metered.

Tenant shall pay to landlord on account of the aforesaid costs, an amount equal to one-twelfth (1/12) of Tenant's pro-rata share of the estimated annual costs of such work performed by Landlord on the first day of each month in advance along with the monthly installment of minimum rental. Said amount shall be adjusted and revised by Landlord as of the end of the initial Lease year and each subsequent Lease year during the term hereon on the basis of the actual maintenance costs incurred during the immediately preceding Lease year plus reasonably anticipated increases in such costs. It is understood and agreed by Landlord and Tenant that Tenant's share of annual common area charge shall not increase in excess of the previous annual charge by more than five percent (5%) and that Tenant shall not be obligated to pay any costs in excess of this increase. Upon Landlord's furnishing to Tenant a written statement setting forth such revised estimate of maintenance costs to be incurred by Landlord pursuant to Article 15, Tenant shall pay to Landlord such revised estimated share in monthly installments, in advance, on the first day of each month in each Lease year upon the next succeeding revision of such estimate. Landlord agrees to provide the Tenant within thirty (30) days after the end of each Lease year a written statement signed by Landlord setting forth the cost of reimburseable items incurred by the Landlord pursuant to this Article and the calculations for determining the pro-rata share of Tenant then due. If Tenant's pro-rata share of the maintenance costs incurred exceed Tenant's payment in that Lease year, Tenant shall pay to Landlord the deficiency within thirty (30) days after receipt of the statement provided Tenant's deficiency is not excess of the maximum increase provided herein. In the event of a dispute between Landlord and Tenant concerning the dollar amount or method of allocation contained in the statement of Landlord, initially, Tenant shall be responsible only for that portion of the billing not in dispute. Upon request, Landlord must provide copies of all paid receipts which form the basis for the statement. If Tenant's payment exceeds Tenant's pro-rata share of the costs incurred, Tenant shall be entitled to a credit for such excess against estimated payments next thereafter due to

Landlord on account of Tenant's pro-rata share of the costs incurred by Landlord pursuant to the Article.

Tenant may, upon thirty (30) days notice, have Landlord's records of common area expenditures for the previous calendar year audited by Tenant's accountant; should such audit disclose any overpayment by Tenant, Landlord shall remit said overpayment upon demand. With respect to parking lot illumination, Tenant shall have that portion of the common facilities as is described as Exhibit "A" Parcel "A" metered directly into Tenant's meter. The balance of the common facilities lighting standards shall be metered into Landlord's other Tenant's as depicted on Exhibit "A" Parcel "B" or to Landlord's own meter. It is further understood and agreed that all bulb replacement and care of the lighting standards for the entire common facilities described in Exhibit "A" Parcel "B" shall be part of Landlord's performance of common area maintenance and shall be added to other costs for such maintenance described above.

Further, notwithstanding anything contained herein to the contrary, Tenant reserves the right, for any reason whatsoever, at any time upon thirty (30) days prior written notice to Landlord to assume the duties of Landlord to maintain the common areas located within Exhibit "A" Parcel "A". If Tenant assumes maintenance responsibility it shall at its sole cost and expense maintain said demised premises in the same (or better) manner that Landlord is otherwise required to maintain same under this Article 15. In such event Tenant shall no longer be responsible for pro-rata common area maintenance charges.

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

Alterations and Additional Construction 16. Tenant may, at its own expense, from time to time make such alterations, additions or changes, structural or otherwise, in and to its buildings as it may deem necessary or suitable; provided, however, Tenant shall obtain Landlord's prior written consent to drawings and specifications for structural alterations, additions, or material changes to the exterior building elevation (not including Tenants signs). Landlord's consent to such alterations, additions, or material changes shall not be unreasonably withheld. The term "structural changes", as used herein, shall not include moving of non-loadbearing partitions, minor plumbing and electrical work, modification and rearrangement of fixtures or other minor changes. Landlord, at Tenant's cost, shall cooperate with Tenant in securing building and other permits or authorizations required from time to time for any work permitted hereunder or installations by Tenant. If Tenant makes structural alterations, additions or structural changes it shall not unreasonably interrupt the free flow of traffic around the center.

Tenant may, at its own expense, at any time erect or construct additional building or structures within the expansion area depicted on exhibit "B". In such event gross sales made

in or from said additions shall be excluded from gross sales as defined in Article 4 of this lease and provided further, said additional building or structure shall be excluded from the taxable premises and all ad valorem taxes and assessments levied thereon shall not be deductible from additional rents payable under the terms of Article 4 hereof. Tenant shall reimburse Landlord for any increase in insurance premiums attributable solely thereto. Tenant shall also be solely responsible for exterior and interior repairs thereto, including those necessitated by fire, the elements or other casualty. In the event Tenant constructs any such additions or new construction, Landlord shall not be obligated to furnish additional parking areas in substitution of areas thereby built over, and the number of parking spaces required under Article 10 shall be reduced by the number of spaces covered by such additional buildings or structures. Tenant's plans for such additional buildings or structures shall be subject to Landlord's approval, not to be unreasonably withheld.

Utilities

17. Landlord covenants and agrees that the demised premises shall be properly serviced with gas, electric, telephone, water, sewer and other utilities sufficient to meet Tenant's requirements as of the commencement of the lease term. Tenant shall pay all charges for utility raw materials (gas, water, sewage, telephone, electricity, etc.) furnished to the demised premises during the lease term. Landlord shall not be liable for any interruption or failure whatsoever in utility services, unless due to the negligence of Landlord, and Tenant shall comply with all terms and provisions of this lease notwithstanding any such failure or interruption.

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

Governmental Regulations

18. Tenant shall observe and comply with all requirements of rules, orders and regulations of the federal, state and municipal governments or other duly constituted public authority affecting said demised premises including the making of non-structural alterations, insofar as they are due to Tenant's occupancy; provided, however, in the event such rules, orders and regulations shall either (a) require structural changes, including but not limited to, the erection of a fire escape or exit, or (b) require non-structural changes which would have been required irrespective of the nature of the tenancy, then in either such event, the same shall be complied with by Landlord at its sole expense. If Tenant changes its use of the building which requires additional structural changes Tenant shall observe and comply with said governmental regulations at its own cost as a result of said change of use.

Exculpation

19. Anything to the contrary in this lease notwithstanding the covenants contained in this lease to be performed by Landlord shall not be binding personally, but instead said covenants are made for the purpose of binding only the fee simple or leasehold estate which Landlord owns in the demised premises; provided, however, the obligations imposed by Article 8 of this lease shall be personally binding upon Landlord.

Damage to Demised Premises

20. From and after the "date of occupancy by Tenant," as that term is defined in Article 11 hereof, should Tenant's net worth at any time be less One Hundred Million Dollars (\$100,000,000.00), upon written request of the Landlord or mortgagee, Tenant shall procure fire insurance with extended

coverage endorsement upon the building erected by Landlord pursuant to Article 6 hereof in an amount equal to eighty per cent (80%) of the replacement value of the building above the foundation walls. At any time while Tenant's net worth shall exceed One Hundred Million Dollars (\$100,000,000.00), the Tenant may elect to self-insure its obligation to restore. Policies of fire insurance procured pursuant to this Article shall assure and be payable to Landlord, Tenant and mortgagee and shall provide for release of insurance proceeds to Tenant for restoration of loss.

Landlord and mortgagee, if any shall be furnished certificates from the insuring company showing the existence of such insurance. In case of loss, Tenant is hereby authorized to adjust the loss and execute proof thereof in the name of all parties in interest.

In the event that, at any time during the lease term, the permanent improvements then constituting Tenant's building and site improvements shall be damaged or destroyed (partially or totally) by fire or any other casualty insurable under a standard fire and extended coverage endorsement Tenant shall, at its expense, promptly and with due diligence either (1) repair, rebuild and restore the same as nearly as practicable to the condition existing just prior to such damage or destruction or (2) repair, rebuild and restore the same for the same use and purposes but in accordance with such plans and specifications as are then generally in use by Tenant for the construction of K marts and related structures, provided, however, the repaired, rebuilt or replaced building will have a value not less than its value just prior to said loss. Anything herein to the contrary notwithstanding, it is understood and agreed that if (1) as a result of any such damage or destruction during the last two years of the lease term, Tenant's fixtures, equipment or other property shall be damaged or destroyed in an amount exceeding One Hundred Thousand Dollars (\$100,000.00), or (2) if such damage or destruction shall have taken place within five years of the then scheduled expiration date of the current term of the lease and if the extent of such damage or destruction is such that the cost of restoration would exceed fifty per cent (50%) of the amount it would have cost to replace the Tenant's building on the demised land in its entirety at the time such damage or destruction took place, then Tenant may terminate this Lease as of the date of such damage or destruction by giving written notice to the Landlord within thirty (30) days thereafter and Tenant shall have an additional sixty (60) days, rent free, within which to remove its property from the demised premises. If Tenant is carrying fire insurance to eighty per cent (80%) of the replacement value, all the insurance proceeds shall belong to Landlord and/or Landlord's mortgagee as their interest may appear; in the event the property is self-insured at the time of the loss Tenant shall reimburse Landlord and/or the mortgagee for an amount equivalent to the insurance proceeds that would have been paid had insurance been in force, but not to exceed eighty per cent (80%) of the replacement value of the building. In the event that this Lease shall be terminated as above provided, all unearned rent and other charges paid in advance shall be refunded to Tenant.

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

or destruction; or alternatively Landlord shall be required to clear, clean and raze the fire damaged buildings.

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

Eminent
Domain

21. In the event all of Tenant's buildings constructed by Landlord shall be expropriated 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, Tenant shall have the option to terminate this lease as of the date Tenant shall be deprived thereof.

In the event that less than the whole but more than ten percent (10%) of Tenant's buildings constructed by Landlord 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 any portion of Tenant's buildings, constructed by Landlord, and if this lease shall not be terminated as hereinabove provided, it shall continue as to that portion of the said buildings 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 buildings 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 equitably abate during the period of demolition and restoration, and thereafter the annual minimum rental and the dollar amounts set forth in the first paragraph of Article 4 shall be reduced in the proportion the ground floor area of the part of Tenant's buildings so expropriated shall bear to the total ground floor area of said buildings prior to such expropriation.

Without limiting the foregoing, in the event that any of the land described in Exhibit "A" Parcel "A" shall be expropriated by public or quasi-public authority, Landlord shall make every reasonable effort to substitute equivalent and similarly improved lands contiguous to and properly integrated with the remainder of the site depicted on Exhibit "B". If Landlord shall be unable to substitute such lands and if one or more expropriations shall in total deprive Tenant of the use of more than ten percent (10%) of the land described in Exhibit "A" Parcel "A", then, in such event, the 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 buildings, Tenant shall not have fully amortized expenditures which it may have made on account of any improvements, alterations or changes to its buildings, Landlord shall assign to Tenant that portion of any award payable as a result of such expropriation as shall equal the unamortized portion of Tenant's said expenditures. Said

unamortized portion of Tenant's said expenditures shall be determined by multiplying such expenditures by a fraction, the numerator of which shall be the number of remaining years of the lease term at the time of such expropriation and the denominator of which shall be the number of remaining years of the lease term at the time such expenditures shall have been made plus the number of years for which the lease term may have been subsequently extended.

Tenant shall not be entitled to share in any award made by reason of expropriation of the land or of Landlord buildings 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 and then only if the award for such unamortized expenditures shall be made by the expropriating authority in addition to the award for the land, buildings and other improvements (or portions thereof) comprising the demised premises; however, the Tenant's right to receive compensation for damages or to share in any award shall not be affected in any manner hereby if and to the extent that said compensation, damages, or award is expressly made by reason of the expropriation of the land or buildings or improvements constructed or made by Tenant.

Use, Assign-
ment and
Subletting

22. The premises hereby demised may be used for any lawful retail purpose. Tenant may assign this lease or sublet the whole or any part of the demised premises, but if it does so, it shall remain liable and responsible under this lease.

Signs

23. The demised premises shall be referred to by only such designation as Tenant may indicate. 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 the 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.

Landlord shall erect a freestanding shopping center pylon at the locations within the Shopping Center designated as "Sign Pylon" on Exhibit "B". Such pylon shall display the designation of the Shopping Center. Developer shall have the right to permit other tenants in the Shopping Center to place their signs on the Shopping Center pylons. Upon written notice of the intent to construct such pylon, Tenant may elect to have its name appear on such sign at its cost. In the event Tenant elects to have its name appear on such sign, Tenant's sign shall have top designation on the sign pylon fronting Farmer Lane. The height and width of Tenant's sign shall be proportionate to the height and width of the signs of any other anchor tenants depicted on the sign. The Shopping Center sign shall be designed by the project architect and subject to the written approval of Tenant and Landlord.

Building signs shall be designed and located in accordance with a building sign plan (the "Building Sign Plan") to be

developed by the Project Architect and approved in writing by Tenant and Landlord. Said building sign plan shall establish maximum sign coverage, the location, color and design criteria for all building signs. No building sign shall be constructed or modified in such a manner as to violate such building sign plan. The building sign plan may be modified by Tenant and Landlord as they deem advisable from time to time; Notwithstanding the terms of the building sign plan, all building signs shall be constructed and maintained in accordance with applicable ordinances, governmental regulations and issued variances therefrom.

Landlord shall not permit any other signs, billboards or posters to be displayed on any portion of the demised premises.

Ingress and Egress

24. Landlord warrants as a consideration for Tenant entering into this lease 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.

Landlord's Remedies

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

Bankruptcy

26. 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 to do so; 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 shall be performed by Tenant or someone claiming under it.

Covenant of Title

27. Landlord covenants, represents and warrants that it has full right and power to execute and perform this lease and to grant the estate demised herein and that Tenant, on payment of

the rent and performance of the covenants and agreements hereof, shall peaceably and quietly have, hold and enjoy the demised premises and all rights, easements, appurtenances and privileges belonging 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, Tenant shall provide written notice to Landlord of such defect and Landlord shall have thirty (30) days to cure said defect. If Landlord fails to cure same Tenant shall have the option at Landlord's expense to correct such defect or to annul and void this lease with full reservation of its right to damages, if any.

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

- (a) Public utility and drainage easements and other encumbrances not impairing Tenant's use of the demised premises.

Notwithstanding the aforesaid, developer has entered into a Purchase Agreement with Earl and Lena Podolnick, seller, under the terms of the Agreement, developer is to complete the purchase of the premises described by exhibit "A" Parcel "A & B" prior to construction of the shopping center. Landlord shall, without expense to Tenant and within thirty (30) days after written request by Tenant, furnish (a) a certification based on Landlord's Owner's Title Policy and existing survey by an attorney acceptable to Tenant that Landlord's title is as herein represented and certifying that the premises depicted on Exhibit "B" are within the bounds of the property described in Exhibit "A" Parcel "A", (b) an as-built survey by a licensed surveyor of the land described in Exhibit "A" Parcel "A", and (c) agreements wherein each holder of any lien against the demised premises shall consent to this lease and warrant that Tenant's possession and right of use under this lease in and to the demised premises shall not be disturbed by such holder unless and until Tenant shall breach any of the provisions hereof and this lease or Tenant's right to possession hereunder shall have been terminated in accordance with the provisions of this lease.

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

Mortgage
Subor-
dination

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

Description of 8.339 Acre Tract - Prop. Lot 3

ALL OF THAT CERTAIN PARCEL OR TRACT OF LAND BEING A PORTION OF THE FRANCISCO GARCIA SURVEY ABSTRACT NO. 312 IN TRAVIS COUNTY, TEXAS BEING A PORTION OF THAT CERTAIN TRACT OF LAND AS CONVEYED TO CROW-GOTTESMAN-SHAFER NO. 8 BY DEED RECORDED IN VOLUME 8425, PAGE 653 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS AND ALSO BEING PORTIONS OF TWO TRACTS OF LAND AS CONVEYED TO EARL AND LENA PODOLNICK BY DEEDS RECORDED IN VOLUME 2981, PAGE 557 AND VOLUME 3037, PAGE 1302 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, SAID 8.339 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at an iron pin in concrete found in the North r.o.w. line of Parmer Lane at the Southwest corner of that certain tract of land as conveyed to the City of Austin by deed recorded in Volume 10016, Page 883 of the Real Property Records of Travis County, Texas for the Southeast corner and PLACE OF BEGINNING hereof;

THENCE with the North r.o.w. line of Parmer Lane, N 53°27'00" W for a distance of 100.40 feet to an iron pin set at the Southwest corner hereof;

THENCE with the West and Southwest line of the herein described tract, the following courses:

N 31°32'25" E for a distance of 62.36 feet to an iron pin set at an angle point;

N 17°37'27" E for a distance of 217.64 feet to an iron pin set at an angle point;

N 60°01'55" W for a distance of 80.00 feet to an iron pin set at an angle point;

N 38°31'55" W for a distance of 221.00 feet to a nail set in asphalt for an angle point;

N 29°58'05" E for a distance of 71.00 feet to a nail set in asphalt for an angle point;

N 60°01'55" W for a distance of 129.00 feet to an iron pin set in the East line of that certain tract of land as conveyed to Nash Phillips-Copus, Inc. by deed recorded in Volume 8172, Page 58 of the Real Property Records of Travis County, Texas for an angle point;

N 28°45'31" E for a distance of 146.35 feet to an iron pin set at the Northeast corner of the said NPC tract for an angle point;

N 29°58'05" E for a distance of 158.00 feet to an iron pin set at the Northwest corner hereof;

THENCE with the North line of the herein described tract, the following courses:

S 60°01'55" E for a distance of 158.20 feet to an iron pin set at an angle point;

N 29°58'05" E for a distance of 56.00 feet to an iron pin set at an angle point;

S 60°01'55" E for a distance of 220.00 feet to an iron pin set at an angle point;

S 67°38'41" E for a distance of 44.39 feet to an iron pin set at an angle point;

S 60°01'55" E for a distance of 179.33 feet to an iron pin set at an angle point;

N 29°58'05" E for a distance of 126.50 feet to an iron pin set at an angle point;

S 60°01'55" E for a distance of 136.00 feet to an iron pin set in the East line of the Podolnick tracts for the Northeast corner hereof;

THENCE with the East line of the Podolnick tracts, same being an East line of the herein described tract, S 29°58'05" W for a distance of 305.00 feet to an iron pin found at the Northeast corner of the said City of Austin tract for an angle point hereof;

THENCE with the North and West lines of the said City of Austin tract, the following courses:

N 67°17'19" W for a distance of 223.15 feet to an iron pin found;

S 22°42'41" W for a distance of 220.47 feet to an iron pin found;

S 31°32'25" W for a distance of 55.64 feet to an iron pin found at a point of curvature;

With a curve to the left whose radius is 21.83 feet and whose chord bears S 10°57'18" E for a distance of 29.49 feet to the PLACE OF BEGINNING and containing 8.339 acres of land, more or less.

STATE OF TEXAS:

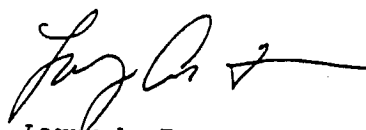
COUNTY OF TRAVIS:

KNOW ALL MEN BY THESE PRESENTS:

That I, Larry A. Turner, a Registered Public Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas this 29th day of December, 1988 A.D.

Bury & Pittman, Inc.
Engineering - Surveyors
1601 Rio Grande, Suite 300
Austin, Texas 78701



Larry A. Turner
Reg. Public Surveyor No. 3908



Signs

4. The Demised premises shall be referred to by only such designation as Tenant may indicate. 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, work, 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 the 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 the demised premises signs of such height and other dimensions as Tenant and Landlord shall mutually 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 the demised premises.

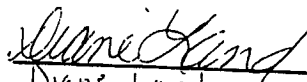
The sole purpose of this instrument is to give notice of said lease and all its terms, covenants and conditions to the same extent as if said lease were fully set forth herein. This instrument does not alter, amend or modify the terms of said Lease in any manner.


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

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

WITNESSES:

LANDLORD
Parmer Point, Ltd.
By: Crow Austin Retail Division
#2 Inc. - General Partner


Diane Land

By: 
Mark Palmer President

Attest: _____
Secretary

REAL PROPERTY RECORDS
COUNTY OF TARRANT TEXAS
11053 0440

TENANT
K MART CORPORATION

Mary E. Harker
Mary E. Harker

By: M. L. Skiles
M. L. Skiles Vice President

Patricia A. Hewelt
Patricia A. Hewelt

Attest: DH Burdick II
Assistant Secretary
DH Burdick II

Return Address:

Trammell Crow Co.
301 Congress Ave #1300
Austin, Tx 78768-2176

REAL PROPERTY RECORDS
COMMISSION TEXAS

11053 0441

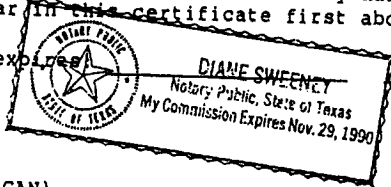
ACKNOWLEDGMENTS

STATE OF (TEXAS)
COUNTY OF (TRAVIS)SS:

I do hereby certify that on this 14 day of March, 1989, before me, Diane Sweeney, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared Mark Palmer and [unclear] known to me to be the President and Secretary of Crow Austin Retail Division #2, Inc., who, being by me duly sworn, did depose and say that they reside in [unclear] respectively; that they are the President and Secretary of Crow Austin Retail Division #2, Inc. the corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its and their free and voluntary act; and that they signed their names thereto by like order.

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

My commission expires:



[Signature]
Notary Public

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

I do hereby certify that on this 29th day of March, 1989, before me, Irene F. Hammond, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared W. S. [unclear] and [unclear] known to me to be the Vice President and Assistant Secretary of K mart Corporation, who, being by me duly sworn, did depose and say that they reside in [unclear] respectively; that they are the Vice President and Assistant Secretary respectively of K mart Corporation, the corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its and their free and voluntary act; and that they signed their names thereto by like order.

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

My commission expires:

[Signature]
Notary Public

Irene F. Hammond
Notary Public in and for the
County of Macomb, acting in
Oakland County, Michigan
My commission expires: 7-24-91

NOTARY SEAL

REAL PROPERTY RECORDS
18746 0442

11053 0442

Description of 8.339 Acre Tract - Prop. Lot 3

ALL OF THAT CERTAIN PARCEL OR TRACT OF LAND BEING A PORTION OF THE FRANCISCO GARCIA SURVEY ABSTRACT NO. 312 IN TRAVIS COUNTY, TEXAS BEING A PORTION OF THAT CERTAIN TRACT OF LAND AS CONVEYED TO CROW-GOTTESMAN-SHAFER NO. 8 BY DEED RECORDED IN VOLUME 8425, PAGE 653 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS AND ALSO BEING PORTIONS OF TWO TRACTS OF LAND AS CONVEYED TO EARL AND LENA PODOLNICK BY DEEDS RECORDED IN VOLUME 2981, PAGE 557 AND VOLUME 3037, PAGE 1302 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, SAID 8.339 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at an iron pin in concrete found in the North r.o.w. line of Parmer Lane at the Southwest corner of that certain tract of land as conveyed to the City of Austin by deed recorded in Volume 10016, Page 883 of the Real Property Records of Travis County, Texas for the Southeast corner and PLACE OF BEGINNING hereof;

THENCE with the North r.o.w. line of Parmer Lane, N 53°27'00" W for a distance of 100.40 feet to an iron pin set at the Southwest corner hereof;

THENCE with the West and Southwest line of the herein described tract, the following courses:

N 31°32'25" E for a distance of 62.36 feet to an iron pin set at an angle point;

N 17°37'27" E for a distance of 217.64 feet to an iron pin set at an angle point;

N 60°01'55" W for a distance of 80.00 feet to an iron pin set at an angle point;

N 38°31'55" W for a distance of 221.00 feet to a nail set in asphalt for an angle point;

N 29°58'05" E for a distance of 71.00 feet to a nail set in asphalt for an angle point;

N 60°01'55" W for a distance of 129.00 feet to an iron pin set in the East line of that certain tract of land as conveyed to Nash Phillips-Copus, Inc. by deed recorded in Volume 8172, Page 58 of the Real Property Records of Travis County, Texas for an angle point;

N 28°45'31" E for a distance of 125.00 feet to an iron pin set at the Northeast corner of the said NPC tract for an angle point;

N 29°58'05" E for a distance of 158.00 feet to an iron pin set at the Northwest corner hereof;

THENCE with the North line of the herein described tract, the following courses:

S 60°01'55" E for a distance of 158.20 feet to an iron pin set at an angle point;

N 29°58'05" E for a distance of 56.00 feet to an iron pin set at an angle point;

S 60°01'55" E for a distance of 220.00 feet to an iron pin set at an angle point;

S 67°38'41" E for a distance of 44.39 feet to an iron pin set at an angle point;

S 60°01'55" E for a distance of 179.33 feet to an iron pin set at an angle point;

PROPERTY RECORDS
11353 0443

Description of 8.339 Acre Tract - Prop. Lot 3 - Page Two

N 29°58'05" E for a distance of 126.50 feet to an iron pin set at an angle point;

S 60°01'55" E for a distance of 136.00 feet to an iron pin set in the East line of the Podolnick tracts for the Northeast corner hereof;

THENCE with the East line of the Podolnick tracts, same being an East line of the herein described tract, S 29°58'05" W for a distance of 585.00 feet to an iron pin found at the Northeast corner of the said City of Austin tract for an angle point hereof;

THENCE with the North and West lines of the said City of Austin tract, the following courses:

N 67°17'19" W for a distance of 223.15 feet to an iron pin found;

S 22°42'41" W for a distance of 220.47 feet to an iron pin found;

S 31°32'25" W for a distance of 55.64 feet to an iron pin found at a point of curvature;

With a curve to the left whose radius is 21.83 feet and whose chord bears S 10°57'18" E for a distance of 29.49 feet to the PLACE OF BEGINNING and containing 8.339 acres of land, more or less.

STATE OF TEXAS:

COUNTY OF TRAVIS:

KNOW ALL MEN BY THESE PRESENTS:

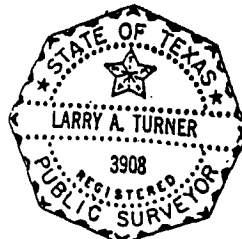
That I, Larry A. Turner, a Registered Public Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas this 13th day of February, 1989 A.D.

Bury & Pittman, Inc.
Engineering - Surveyors
1601 Rio Grande, Suite 300
Austin, Texas 78701



Larry A. Turner
Reg. Public Surveyor No. 3908



REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

11053 0444

Description of 14.224 Acre Tract - Prop. Parmer Point Subd.

ALL OF THAT CERTAIN PARCEL OR TRACT OF LAND BEING A PORTION OF THE FRANCISCO GARCIA SURVEY ABSTRACT NO. 312 IN TRAVIS COUNTY, TEXAS BEING A PORTION OF THAT CERTAIN TRACT OF LAND AS CONVEYED TO CROW-GOTTESMAN-SHAFER NO. 8 BY DEED RECORDED IN VOLUME 8425, PAGE 653 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS AND ALSO BEING PORTIONS OF TWO TRACTS OF LAND AS CONVEYED TO EARL AND LENA PODOLNICK BY DEEDS RECORDED IN VOLUME 2981, PAGE 557 AND VOLUME 3037, PAGE 1302 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, SAID 14.224 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at an iron pin in concrete found in the North r.o.w. line of Parmer Lane at the Southwest corner of that certain tract of land as conveyed to the City of Austin by deed recorded in Volume 10016, Page 883 of the Real Property Records of Travis County, Texas for the Southeast corner and PLACE OF BEGINNING hereof;

THENCE with the North r.o.w. line of Parmer Lane, the following courses:

N 53°27'00" W for a distance of 210.46 feet to a concrete monument found at an angle point;

N 41°18'37" W for a distance of 282.28 feet to a concrete monument found at the most Southerly corner of the remaining portion of land as conveyed to Nash Phillips-Copus, Inc. by deed recorded in Volume 8172, Page 58 of the Real Property Records of Travis County, Texas for the Southwest corner hereof;

THENCE with the East and North lines of the NPC tract, the following courses:

N 28°46'19" E for a distance of 244.54 feet to an iron pin set at an angle point;

N 23°10'00" W for a distance of 96.50 feet to an iron pin set at an angle point;

N 28°45'31" E for a distance of 146.35 feet to an iron pin set at the Northeast corner of the NPC tract for an angle point hereof;

N 59°03'51" W for a distance of 116.08 feet to a concrete monument found in the East r.o.w. line of F.M. 1325 (Mopac) at an angle point hereof;

THENCE with the said r.o.w. line of F.M. 1325, N 11°53'06" E for a distance of 303.91 feet to an iron pin set at the Northwest corner hereof;

THENCE with the North line of the herein described tract, the following courses:

N 63°46'45" E for a distance of 95.50 feet to an iron pin set at an angle point;

S 60°01'55" E for a distance of 320.00 feet to an iron pin set at an angle point;

S 01°50'45" E for a distance of 28.04 feet to an iron pin set at an angle point;

S 60°01'55" E for a distance of 560.00 feet to an iron pin set in the East line of the said Podolnick tracts at the Northeast corner hereof;

THENCE with the East line of the Podolnick tracts, same being an East line of the herein described tract, S 29°58'05" W for a distance of 585.00 feet to an iron pin found at the Northeast corner of the said City of Austin tract for an angle point hereof;

THENCE with the North and West lines of the said City of Austin tract, the following courses:

N 67°17'19" W for a distance of 223.15 feet to an iron pin found;

S 22°42'41" W for a distance of 220.47 feet to an iron pin found;

S 31°32'25" W for a distance of 55.64 feet to an iron pin found at a point of curvature;

With a curve to the left whose radius is 21.83 feet and whose chord bears S 10°57'18" E for a distance of 29.49 feet to the PLACE OF BEGINNING and containing 14.224 acres of land, more or less.

STATE OF TEXAS:

COUNTY OF TRAVIS:

KNOW ALL MEN BY THESE PRESENTS:

That I, Larry A. Turner, a Registered Public Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas this 29th day of December, 1988 A.D.

Bury & Pittman, Inc.
Engineering - Surveyors
1601 Rio Grande, Suite 300
Austin, Texas 78701

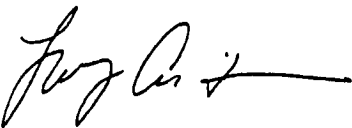

Larry A. Turner
Reg. Public Surveyor No. 3908



EXHIBIT "A" PARCEL "B"

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

11053 0446

Trammel Crow Co.
 Attention: Mr. Mark Palmer
 Re: K mart #3771 - Austin, Texas

-2-

September 21, 1988

SITE DEVELOPMENT (Continued)

The site development design shall encompass all aspects of the proposed K mart operation i.e. access, site drainage and the relationship of the K mart floor elevation to adjacent grades, roads and buildings. Land balance shall be given consideration but shall not be the overriding factor in the ultimate site design.

Preparation of final engineering drawings or commitments affecting site improvements and development shall not be made by the Developer until approval has been granted by the K mart Corporation.

The design package shall indicate the proposed building location, floor elevation, site drainage pattern and utilities. The design package shall also include a topographical survey of the entire site including an area extending approximately 150' onto all adjacent properties and to the centerline of all boundary roads, or as may be required to determine any adjacent terrain conditions which might influence the site development design. The survey shall also include the site description, measurements and all existing utilities. Preliminary test boring reports indicating the sub-surface soil conditions shall also be submitted.

The K mart Corporation will review all submitted data and if necessary, visit the site. If in the judgement of the K mart Corporation the proposed site development design would be detrimental to the K mart operation, the design will be returned to the Developer for re-study. Upon approval of the Site Development Design by the K mart Corporation, the Developer may proceed with final engineering drawing.

BUILDING DESIGN DEVELOPMENT

The K mart Corporation shall be party to the initial design phase of the K mart building exterior in order to ensure its compatibility with the entire development. The K mart exterior can be modified to achieve this requirement. However, the economy of the design concept should be preserved.

The Developer shall submit to the Tenant's Design Division two (2) sets of preliminary design presentation drawings depicting the total project. The drawings shall include elevations, sections, dimensions and indicate proposed materials. A sample board of the proposed materials shall be submitted.

The submittal shall be made and Tenant's approval shall be obtained prior to the start of Construction Documents.

The checking and approval of the Contract Documents will not be processed without the compliance of the above.

The Typical K mart store plans and specifications described above are to be modified as indicated in the criteria revisions outlined in the following paragraphs.

1. Rear Stockroom Observation Towers consisting of drawing TD-291 dated revised June 24, 1988.

Trammel Crow Co.
Attention: Mr. Mark Palmer
Re: K mart #3771 - Austin, Texas

-3-

September 21, 1988

2. Processing Table - Electrical consisting of drawing TD-288 dated revised through September 8, 1987.
3. Power Poles - Electrical consisting of drawing TD-295 dated revised October 30, 1987.
4. Garden Shop Sign consisting of drawing TD-296 dated revised October 28, 1987.
5. Revised Dressing Room Area consisting of drawing TD-298 dated revised March 4, 1988.
6. Revised Checking and Receiving Room Door consisting of drawing TD-302 dated December 30, 1987.
7. Overhead Door Addition consisting of drawing TD-304 dated February 5, 1988.
8. New Office Area consisting of drawings TD-306A-1 dated revised July 13, 1988 and TD-306M-1, TD-306E-1 and TD-306E-2 dated February 26, 1988.
9. Column Extension for Dish Antenna Support consisting of drawing TD-307 dated revised August 22, 1988.
10. Security Window in Manager's Office consisting of drawing TD-311 dated April 22, 1988.
11. Garden Shop Power Plan consisting of drawing TD-312 dated August 9, 1988.
12. Horizontal Aluminum Mullion Addition consisting of drawing TD-313 dated September 2, 1988.

These drawings and specifications describe a 86,479 square foot K mart with the Garden Shop to the right. We are including a Preliminary Layout K-0334, dated September 16, 1988, for this size and hand store. This drawing also indicates any required modifications to the Typicals for this specific location.

Please note that the Vestibule has been relocated and a Snack Bar has been indicated which replaces the Delicatessen included in the Criteria. These changes are further detailed in the enclosed drawings as follows:

- A. Preliminary elevation sketch dated May 6, 1988.
- B. Drawing FD-300-R Deli-Snack Bar dated September 15, 1988.
- C. Design information dated revised September 26, 1988.
- D. Drawing SDB816M - Mechanical - dated October 4, 1987.
Electrical information will be forthcoming.

All of the equipment and furniture will be provided and installed by Tenant. Electrical and Mechanical work including final hook-up by Landlord.

EXHIBIT "C"

Trammel Crow Co.
 Attention: Mr. Mark Palmer
 Re: K mart #3771 - Austin, Texas

-4-

September 21, 1988

PLEASE BE ADVISED that the Sales Area ceiling shall be raised to 14'-0".

Please be advised that a pylon sign is approved for this location and we are enclosing herewith two (2) copies of drawing SN-207 K mart Pylon Sign dated June 3, 1988. Pylon sign will be furnished and installed by Tenant. Landlord shall provide electric service and control from Tenant's panel to pylon sign location. Final connection to pylon sign by Tenant.

At this time we wish to re-direct your attention to paragraph 8 - SIGN APPROVALS as contained in the Criteria Specifications on page 14-6 as follows:

8. SIGN APPROVALS

8.01 Landlord shall, at Landlord's expense, make every reasonable effort to procure the necessary approval or variances, if required, for the erection and installation of the Tenant's exterior signs, herein specified. Said sign approvals shall be aggressively pursued simultaneously and with equal diligence accorded the general building permit application. If at any time opposition or objections are raised to the requested signs which indicate permits may be denied, Landlord shall promptly advise Tenant in writing.

A. Tenant's sign erector shall obtain the sign permit.

Please advise your consultants regarding the following utilities and services for the above mentioned location.

Secondary electric service from City of Austin is acceptable. Service shall be sized for an all electric store. Power factor correction is not required unless energy conservation codes in effect require improvement.

Space heating (resistance type) and domestic hot water heater shall be all electric.

Provide one (1) meter for each utility to the K mart.

The K mart parking lot lighting and service drive lighting shall be connected directly to K mart switchboard through K mart meter. Where the site includes one or more co-tenants the parking lot lighting in front and on the Garden Shop side shall be fed through the K mart meter and the remaining portion on the Landlord or other meters.

Landlord's Engineer shall consult the telephone company relative to proper facilities, including conduit, to handle the telephone installation.

Supplemental information, which modifies or clarifies the enclosed drawings and/or specifications, is as follows:

Please be advised that the fluorescent lamps used in the Sales Room shall be F96T12/SP35WM 60 watt units not standard 75 watt.

All stock rooms, both upper and lower levels, shall be air conditioned. See drawings M-2 and M-3 which show independent air conditioning units for checking and receiving, main stock area and mezzanine stock areas (A.C. units #15, #16 & #17). When stock rooms are air conditioned, power exhausters #5, #6 & #7 and unit heaters designated for "main stock" shall be eliminated.

Trammel Crow Co.
Attention: Mr. Mark Palmer
Re: K mart #3771 - Austin, Texas

-5-

September 21, 1988

Due to the climatic conditions prevailing at this location, the following modifications shall be incorporated into the design:

1. Design conditions for this specific location will allow reduction in the amount of heating equipment required. Landlord's consulting engineer shall make a study to determine in which roof top units the heating apparatus will be reduced or deleted. In any case, roof top units #1 thru #5 located at store front will require some heating and heater(s) will also be required at overhead doors in main receiving area.

When any alternates are accepted, as described in, but not limited to Division 15 - Substitutions, the Developer shall advise K mart Corporation of such deviations from the specifications to allow smooth review(s) of the associated shop drawings and/or Letter(s) of Intent during the submittal period.

Please advise your Architect and Consulting Engineers that our insurance underwriter is Protection Mutual Insurance Company, 17330 Preston Road, Suite 200C, L. B. 436 & 442, Dallas, Texas 75252, phone: (214) 931-7650.

Direct any inquiries to Mr. K. R. McCrary at the above address.

At this time we are also enclosing six (6) copies of our plot plan #K-107 dated revised October 4, 1988 for this location, as approved by K mart Corporation Management. Please forward four (4) copies to your Architect/Engineers for implementation into the Contract Documents. If any deviation is contemplated from the above plot plan arrangement, please advise immediately.

These sets of Typical plans and specifications are to be used only as a guide for the preparation of complete working drawings and specifications and as such are not intended, nor will their use be permitted, for construction purposes.

This project has been assigned a number (#3771) and you are at liberty to proceed with your site development design package and contract drawings and specifications. Please notify the writer of the names and addresses and FAX numbers of your Architect and Engineers within thirty (30) days of projected date of completion of contract drawings and specifications. Also please notify Mr. C. E. Strom, Manager, Building Division, of the names and addresses of your Contractors as soon as possible.

At this time we request that your Architects/Engineers contact the Design Division, K mart Corporation prior to start of preparation of the Contract Documents in order to obtain the latest update information. This procedure will, hopefully, eliminate unnecessary revisions to the submitted documents and reduce time and effort in finalizing the said documents and their subsequent release for construction.

Failure to comply with the above request will relieve the K mart Corporation from extra payments due to excessive revisions.

EXHIBIT "C"

First Amendment to Lease Agreement
K Mart #3771 - Austin Texas (Parmer Lane)

This First Amendment to Lease Agreement (this "Amendment") is entered into by and between Parmer Point, Ltd., a Texas limited partnership ("Landlord") and K Mart Corporation, a Michigan corporation ("Tenant").

R E C I T A L S:

A. Landlord and Tenant entered into a lease agreement (the "Lease") dated as of the 14th day of March, 1989, pursuant to which Tenant leased from Landlord 8.339 acres in Travis County, Texas, now known as Lot 3, Parmer Point Subdivision, a subdivision in Travis County, Texas according to the map or plat thereof recorded in Volume 88, Page 185, Plat Records of Travis County, Texas (said Parmer Point Subdivision being referred to hereinafter as the "Subdivision"). A Memorandum of the Lease is recorded at Volume 11053, Page 439 of the Real Property Records of Travis County, Texas.

B. Subsequent to entering into the Lease, Landlord (1) modified both the plat of the Subdivision and the site plan (the "Site Plan") on file with the City of Austin with respect to the Subdivision, and (2) purchased additional land adjacent to the Shopping Center (as defined in the Lease).

C. Landlord and Tenant desire to amend and modify the Lease to reflect the revisions to the Subdivision plat and the Site Plan and to clarify certain provisions of the Lease pertaining to access and parking rights between the Shopping Center and Landlord's adjacent land.

NOW THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Except as otherwise specified in this Amendment, all capitalized words herein shall have the meanings set forth in the Lease and the terms and provisions of the Lease are hereby ratified and continued.

2. Exhibit "A" Parcel "B" to the Lease is hereby deleted in its entirety and Exhibit A Parcel B attached hereto is substituted therefor.

3. Exhibit "B" to the Lease is hereby deleted in its entirety and Exhibit B attached hereto is substituted therefor.

3. Paragraph 43 of the Lease is hereby deleted in its entirety and the following paragraphs are substituted therefor:

Landlord hereby grants to Tenant and to Tenant's agents, employees, invitees and guests the nonexclusive right to use and enjoy the driveways and parking areas constructed from time to time on Landlord's Property (as defined below) for (a) the free and uninterrupted ingress and egress of pedestrian and vehicular traffic to, from and between the demised premises and any public right-of-way adjacent to Landlord's Property and (b) vehicular parking on Landlord's Property. Tenant hereby acknowledges that Landlord has reserved to Landlord and to Landlord's Permitted Users (as defined below) the nonexclusive right to use and enjoy the driveways and parking areas constructed from time to time on the demised premises for (i) the free and uninterrupted ingress and egress to, from and between the demised premises and Landlord's Property in locations substantially as depicted on the site plan of Landlord's Property attached hereto as Exhibit B and incorporated herein, and (ii) vehicular parking on the demised premises. For purposes of this paragraph, "Landlord's

Property" shall mean Lots 1 and 2, PARMER POINT SUBDIVISION, a subdivision in Travis County, Texas according to the map or plat thereof recorded in Volume 88, Page 185, Plat Records of Travis County, Texas (the "Parmer Point Lots") and Lots 1, 2 and 3, PARMER CROSSING SUBDIVISION, a subdivision in Travis County, Texas according to the map or plat thereof recorded in Volume 89, Pages 39-40, Plat Records of Travis County, Texas, and "Landlord's Permitted Users" shall mean (x) the agents, employees, invitees and guests of the owners of Landlord's Property, (y) all tenants, subtenants and concessionaires of Landlord's Property, and (z) the suppliers, customers, patrons, employees and invitees of all of same.

Landlord, at Landlord's sole option, may modify Exhibit A Parcel B and Exhibit B to add land to or subtract land from Landlord's Property by filing an instrument signed by Landlord in the Real Property Records describing the property to be added or subtracted and including a site plan reflecting the locations of the parking and driveway facilities to be located on Landlord's Property following the addition or subtraction of land; provided, however that Landlord shall not add to or subtract from such property if such addition or subtraction will cause a disproportionate number of persons to utilize the demised premises for parking or other purposes; and further provided that Landlord shall not subtract any portion of the Parmer Point Lots from Landlord's Property without Tenant's prior approval. Landlord shall deliver to Tenant a copy of any such instrument promptly after Landlord records same.

Landlord and Tenant each agree that neither party will exercise the rights granted to it under this Article in a manner which will unreasonably interfere with Landlord's or Tenant's use of Landlord's Property or the demised premises, as applicable. Landlord agrees to maintain the Parmer Point Lots, at Landlord's expense, in a clean and neat condition and to keep the areas of Tenant's access to the Parmer Point Lots reasonably unobstructed. Tenant agrees, in addition to its other maintenance obligations under this lease, to keep the areas of Landlord's access to the demised premises unobstructed.

4. Tenant acknowledges and confirms that as of the date of execution of this Amendment, Landlord has complied with all of Landlord's obligations under the Lease for the construction of site improvements, and agrees that the substitution of the Exhibit B attached hereto in place of the Exhibit "B" attached to the Lease shall not be construed as obligating Landlord to construct any site improvements other than the site improvements shown on Exhibit B of this Lease prior to the date of this Amendment.

5. Landlord and Tenant will execute a Memorandum of Amendment to Lease reflecting the amendments to the Lease described herein.

EXECUTED on the dates set forth below to be effective for all purposes on the 1st day of July, 1990.

Parmer Point, Ltd., a Texas limited partnership

By: Crow Austin Retail Division #2, Inc., a Texas corporation

Date: 7/2/90


By: 
S. Mark Palmer, President

EXHIBIT "A" PARCEL "B"

TRACT 1:

Lots 1, 2, 3, 4, 5 and 6, PARMER POINT SUBDIVISION, a subdivision in Travis County, Texas according to the map or plat thereof recorded in Volume 88, Page 185, Plat Records of Travis County, Texas;

SAVE AND EXCEPT:

0.266 acres out of Lot 6, PARMER POINT SUBDIVISION, more particularly described by metes and bounds on Schedule 1 attached hereto and incorporated herein for all purposes;

TRACT 2:

0.266 acres situated in the Francisco Garcia Survey No. 60, Abstract No. 312, in Travis County, Texas, more particularly described by metes and bounds on Schedule 2 attached hereto and incorporated herein for all purposes.

TRACT 3:

Lots 1, 2 and 3, PARMER CROSSING SUBDIVISION, a subdivision in Travis County, Texas according to the map or plat thereof recorded in Volume 89, Pages 39-40, Plat Records of Travis County, Texas.

TENANT:

K MART CORPORATION, a Michigan corporation

By: M.L. Skiles
Name: M.L. SKILES
Title: VICE PRESIDENT

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on July 3, 1990, by S. Mark Palmer, President of Crow Retail Division #2, Inc., a Texas corporation, General Partner of PARMER POINT, LTD., a Texas limited partnership, on behalf of said corporation and limited partnership.



Diane Sweeney
NOTARY PUBLIC, State of Texas

My Commission Expires: _____

Print Name: _____

THE STATE OF MICHIGAN §
COUNTY OF OAKLAND §

This instrument was acknowledged before me on 8-29-, 1990, by M.L. SKILES of K Mart Corporation, a Michigan corporation, on behalf of said corporation.

Rosanne Cautela
NOTARY PUBLIC, State of Michigan

My Commission Expires: _____

Print Name: CAUTELA

4-15-91

After Recording Return To:

Ann E. Vanderburg, Esq.
Graves, Dougherty, Hearon & Moody
P.O. Box 98
Austin, Texas 78767

EXHIBIT "A" PARCEL "B"

TRACT 1:

Lots 1, 2, 3, 4, 5 and 6, PARMER POINT SUBDIVISION, a subdivision in Travis County, Texas according to the map or plat thereof recorded in Volume 88, Page 185, Plat Records of Travis County, Texas;

SAVE AND EXCEPT:

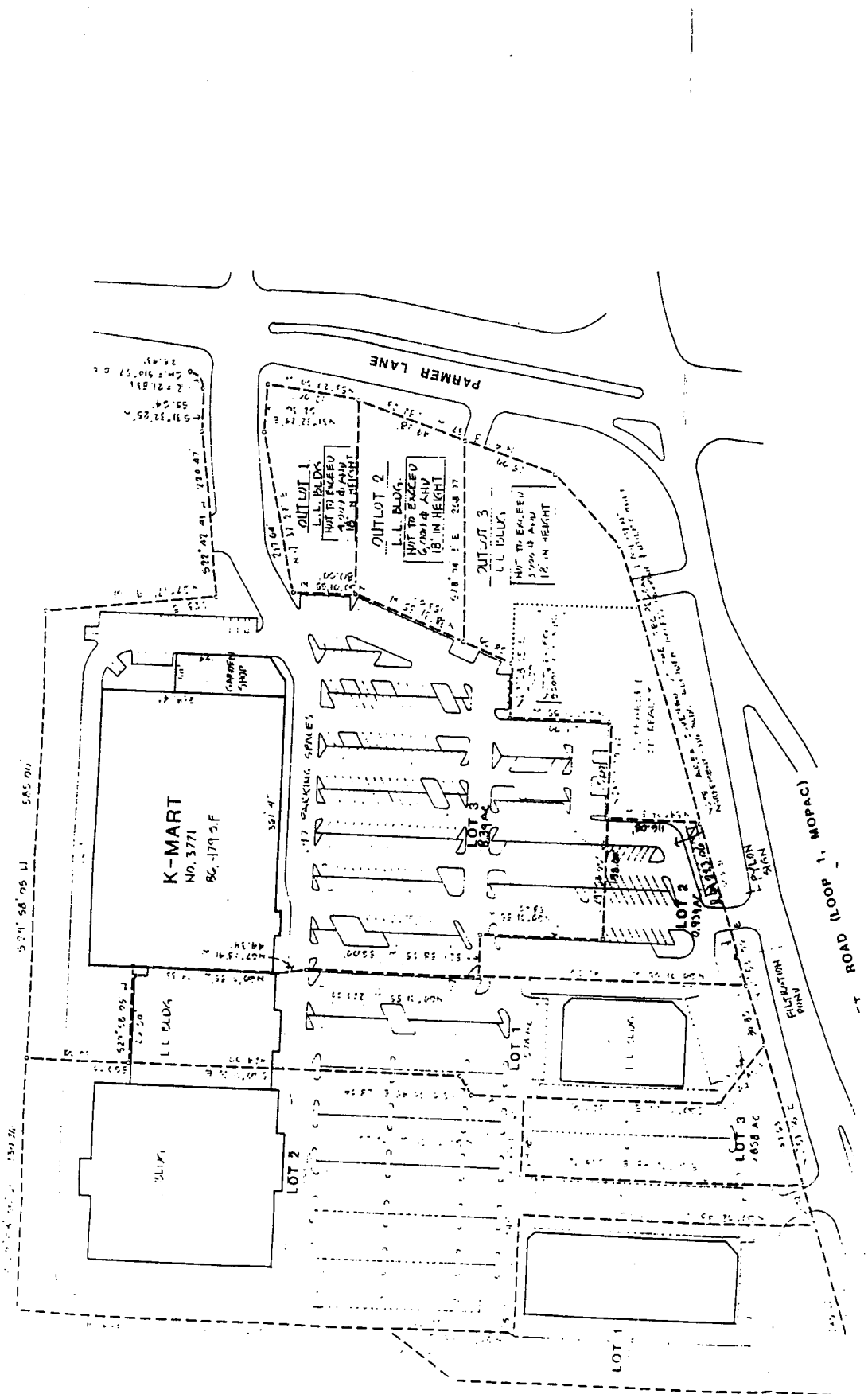
0.266 acres out of Lot 6, PARMER POINT SUBDIVISION, more particularly described by metes and bounds on Schedule 1 attached hereto and incorporated herein for all purposes;

TRACT 2:

0.266 acres situated in the Francisco Garcia Survey No. 60, Abstract No. 312, in Travis County, Texas, more particularly described by metes and bounds on Schedule 2 attached hereto and incorporated herein for all purposes.

TRACT 3:

Lots 1, 2 and 3, PARMER CROSSING SUBDIVISION, a subdivision in Travis County, Texas according to the map or plat thereof recorded in Volume 89, Pages 39-40, Plat Records of Travis County, Texas.



FIELD NOTES
FOR
PARMER POINT, LTD.

JANUARY 16, 1990
PAGE 1 OF 1
0.266 ACRE

FIELD NOTE DESCRIPITON OF 0.266 ACRE BEING A PORTION OF LOT 6, PARMER POINT SUBDIVISION, A SUBDIVISION IN TRAVIS COUNTY, TEXAS RECORDED IN PLAT BOOK 88, PAGES 185 & 186 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS; SAID 0.266 ACRE BEING A PORTION OF THAT CERTAIN TRACT OF LAND CONVEYED TO PARMER POINT, LTD. BY A DEED RECORDED IN VOLUME 10974, PAGE 1831 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; SAID 0.266 ACRE BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS;

Beginning at a point in the East line of that certain tract of land designated as Tract 5 and described as containing 0.925 acre in a deed to TD Realty, Inc. recorded in Volume 10399, Page 674 of the Real Property Records of Travis County, Texas, same being the West line of said Lot 6, and from which point a highway R.O.W. monument found in the North R.O.W. line of W. Parmer Lane and being at the Southwest corner of said Lot 6 bears, S 28° 43' 57" W a distance of 172.14 feet, said point being the Southwest corner and POINT OF BEGINNING hereof;

THENCE through and across said Lot 6 with the South line hereof, S 60° 04' 32" E for a distance of 49.79 feet to an iron rod set for the Southeast corner hereof;

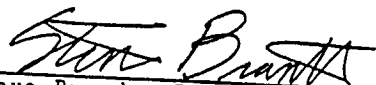
THENCE continuing through and across said Lot 6 with the East line hereof, N 29° 55' 28" E at a distance of 80.52 feet pass a nail found at an ell corner in the North line of said Lot 6, same being a corner in the Southwest line of Lot 3 of the aforesaid subdivision, continue on the same course for a total distance of 151.52 feet to an iron rod set at a Northeast corner of said Lot 6 same being a corner of said Lot 3, for the Northeast corner hereof;

THENCE with the North line of the herein described tract being the North line of said Lot 6, same being the Southwest line of Lot 3, N 60° 04' 32" W for a distance of 129.00 feet to an iron rod set in the East line of said Tract 5, same being a Southwest corner of said Lot 3 and the Northwest corner of said Lot 6, for the Northwest corner hereof;

THENCE with the West line of the herein described tract being the West line of said Lot 6, same being the East line of said Tract 5 the following three (3) courses and distances;

- 1) S 28° 42' 54" W for a distance of 21.33 feet to an iron rod found for a corner hereof;
- 2) S 23° 12' 42" E for a distance of 96.53 feet to an iron rod found for a corner hereof;
- 3) S 28° 43' 57" W for a distance of 72.30 feet to the POINT OF BEGINNING and containing 0.266 acre of land, more or less.

I, Steve Brandt, a Registered Professional Land Surveyor, hereby certify that this description represents the results of an actual survey made on the ground of the property legally described herein, it is true and correct to the best of my knowledge and belief.


Steve Brandt, R.P.L.S. No. 4126
State of Texas

Date 1-16-90



BRANDT SURVEYING COMPANY, PROFESSIONAL CORPORATION
3930 BEE CAVE ROAD, SUITE D AUSTIN, TEXAS 78746 (512) 328-0621

FIELD NOTES
FOR
TD REALTY, INC.

JANUARY 16, 1990
PAGE 1 OF 1
0.267 ACRE

FIELD NOTE DESCRIPTION OF 0.267 ACRE SITUATED IN THE FRANCISCO GARCIA SURVEY NO.60, ABSTRACT NO.312 IN TRAVIS COUNTY, TEXAS; BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESIGNATED AS TRACT 5 AND DESCRIBED AS CONTAINING 0.925 ACRE IN A DEED TO TD REALTY, INC. RECORDED IN VOLUME 10399, PAGE 674 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; SAID 0.267 ACRE BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS;

Beginning at a highway R.O.W. monument found in the North R.O.W. line of W. Parmer Lane and being at the Southwest corner of Lot 6, Parmer Point Subdivision, a subdivision in Travis County, Texas recorded in Plat Book 88, Pages 185 & 186 of the Plat Records of Travis County, Texas, same being the Southeast corner of said Tract 5 for the Southeast corner and POINT OF BEGINNING hereof;

THENCE with the East line of the herein described tract being the East line of said Tract 5 same being the West line of said Lot 6, N 28° 43' 57" E for a distance of 172.14 feet to a point for the Northeast corner hereof;

THENCE through and across said Tract 5 with the North line of the herein described tract N 60° 04' 32" W for a distance of 109.39 feet to an iron rod set in the East R.O.W. line of Loop 1 (FM 1325-Burnet Road) same being the West line of said Tract 5, for the Northwest corner hereof;

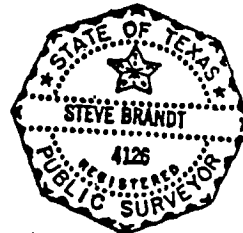
THENCE with the West line of the herein described tract being the West line of said Tract 5, same being the East R.O.W. line of said Loop 1, the following two (2) courses and distances;

- 1) S 12° 16' 33" W for a distance of 80.40 feet to a highway R.O.W. monument found for a corner hereof;
- 2) S 12° 55' 47" E for a distance of 130.26 feet to the POINT OF BEGINNING and containing 0.267 acre of land, more or less.

I, Steve Brandt, a Registered Professional Land Surveyor, hereby certify that this description represents the results of an actual survey made on the ground of the property legally described herein, it is true and correct to the best of my knowledge and belief.

Steve Brandt
Steve Brandt, R.P.L.S. No.4126
State of Texas

Date 1-16-90



BRANDT SURVEYING COMPANY, PROFESSIONAL CORPORATION
3930 BEE CAVE ROAD, SUITE D AUSTIN, TEXAS 78746 (512) 328-0621

6. In all other respects the Lease shall remain unmodified and in full force and effect.

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

NW-PARMER, LTD., a Texas limited partnership

By: Nationwide Development Company, general partner

By: Robert H. McNaughten
Name: Robert H. McNaughten
Title: Vice President

KMART CORPORATION, a Michigan corporation

By: M. L. Skiles
M. L. Skiles,
Senior Vice President

STATE OF ~~TEXAS~~ §
OHIO §
COUNTY OF ~~FRANKLIN~~ §

The foregoing instrument was acknowledged before me this 22nd day of June, 1992, by Robert H. McNaughten, VICE PRESIDENT of Nationwide Development Company, an Ohio corporation, general partner of NW-PARMER, LTD., a Texas limited partnership, on behalf of the partnership.



Sue Ann Crego
Notary Public - State of Ohio
My Commission expires
October 20, 1995

Sue Ann Crego
Notary Public in and for
The State of ~~Texas~~ OHIO

My commission expires: 10-20-95

STATE OF MICHIGAN §
 §
COUNTY OF OAKLAND §

The foregoing instrument was acknowledged before me this
16th day of March, 1992, by M. L. Skiles, Senior Vice President
of KMART CORPORATION, a Michigan corporation, on behalf of the
corporation.

WITNESS my hand and official seal.

Christine T. Deola
Notary Public, Macomb County,
State of Michigan
My commission expires: 6-5-96

CHRISTINET. DEOLA
Notary Public, Macomb County, Michigan
Acting in Oakland County, Michigan
My Commission Expires June 5, 1996