

UNITED STATES BANKRUPTCY COURT <u>Northern</u> DISTRICT OF <u>Illinois</u>		<b>PROOF OF CLAIM</b>
Name of Debtor <b>KMART CORPORATION</b>		<div style="display: flex; flex-direction: column; align-items: center;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-weight: bold; font-size: 2em;">FILED</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-size: 0.8em;">UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF ILLINOIS</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-size: 0.8em;">MAR 1 1 2002</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-weight: bold; font-size: 0.8em;">KENNETH S. GARDNER MAILROOM - MM</div> </div> <p style="text-align: center; font-size: 0.8em;">THIS SPACE IS FOR COURT USE ONLY</p>
Case Number <b>02-2474</b>		
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. §503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <b>KPT Communities LLC</b>		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.
Name and address where notices should be sent: <b>Margaret R. Westbrook, Esq. Kennedy Covington Lobdell &amp; Hickman, LLP P. O. Box 1070 Raleigh, NC 27606</b>		
Telephone number: <b>919-743-7311</b>		
Account or other number by which creditor identifies debtor:	Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> amends a previously filed claim, dated: _____	
<b>1. Basis for Claim</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other <u>Pre-petition and post-petition rent</u>		
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ to _____ <div style="display: flex; justify-content: space-between; width: 100%; font-size: 0.8em;"> <span>(date)</span> <span>(date)</span> </div>		
<b>2. Date debt was incurred:</b> On or before <b>January 22, 2002</b>		<b>3. If court judgment, date obtained:</b>
<b>4. Total Amount of Claim at Time Case Filed:</b> \$ <u>See Exhibit A</u> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>5. Secured Claim.</b> <input type="checkbox"/> Check this box if you claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____  Value of Collateral: \$ _____  Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		<b>6. Unsecured Priority Claim.</b> <input checked="" type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ <u>See Exhibit A</u> Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4000)*, earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$1,800* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input checked="" type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(1). <small>*Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
<b>7. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. <b>8. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attached a summary. <b>9. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY  <div style="font-size: 1.5em; font-weight: bold;">KP 093</div>  <div style="font-size: 1.5em; font-weight: bold;">3/11/02</div>
Date <b>3/5/02</b>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): "Landlord" (See Exhibit A) By: <u>ROLAND MULLER</u> its Senior Vice President and Secretary	

**EXHIBIT A  
TO PROOF OF CLAIM  
KMART CORPORATION  
(KPT Communities LLC)  
(Gateway Plaza, Wilson, North Carolina Store 4752)**

1. KPT Communities LLC is the owner of the Shopping Center and Landlord to the Debtor in Gateway Plaza, Wilson, North Carolina. Konover Property Trust, Inc., a Maryland corporation ("Landlord"), is the General Partner of KPT Properties, L.P. Robin Malphrus is Senior Vice President and Secretary of Konover Property Trust, Inc.

2. Following is the pre-petition rent due under the Debtor's Lease:

Location	Pre-Petition
Wilson, North Carolina	\$56,477.24

3. KMART Corporation entered into a lease agreement dated October 3, 1991 ("Gateway Lease") for certain premises located in the Gateway Plaza Shopping Center, Wilson, North Carolina. A copy of the Gateway Lease is attached as **Exhibit B** to this Proof of Claim.

4. As of the date of the petition, the Debtor owed rent in the amount of \$56,477.24 under the Gateway Lease.

5. Landlord therefore asserts an unsecured claim in the amount of **\$56,477.24** for pre-petition amounts due under the Gateway Lease.

6. The Lease has not been assumed or rejected as of the date of this Proof of Claim.

7. Landlord reserves its right to amend its proof of claim throughout the administration of the case.

Kmart # 4752  
Wilson, North Carolina

**Parties**

THIS LEASE made and entered into as of this 3rd day of October, 1991, between NORTH HILLS PROPERTIES, INC., a North Carolina corporation, having its principal office at 4224 Six Forks Road, Raleigh, North Carolina 27609 (herein referred to as "Landlord"), and KMART CORPORATION, a Michigan corporation having its principal office at 3100 West Big Beaver Road, Troy, Michigan 48084 (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 for the lease term the following property: Tenant's completed building (designated Kmart), together with site improvements to be constructed as hereinafter specified by Landlord at its expense together with land comprising not less than nine (9.0) acres described in Parcel "A" of Exhibit "A", attached hereto and made a part hereof, and situated in the City of Wilson, County of Wilson, State of North Carolina; said building to be in the location depicted on Exhibit "B" attached hereto and made a part hereof, and of the following dimensions:

Kmart Building: 381.33' in width by 239.33' in depth  
Total Size: 91,266 Sq. ft.

In addition, Landlord shall provide a fenced garden shop area having dimensions of 50' in width by 184' in depth, as indicated on Exhibit "B", attached hereto.

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

Landlord hereby gives and grants unto Tenant, in common with others entitled thereto, including Tenant's agents, employees, customers, licensees and invitees the following licenses, rights, privileges and easements: the use for their intended purposes of parking areas, common areas (including rest rooms and other facilities, if any), roadways, sidewalks and access ways to public streets and highways indicated on said Exhibit "B", together with the use for their intended purposes of any delivery or servicing areas adjoining Tenant's said buildings or designated as such on Exhibit "B", which areas may be utilized for the passage, unloading and, if necessary, turning around of trailer trucks and other commercial vehicles.

**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 rent of Five Hundred Fifteen Thousand Six Hundred Fifty-Two and 90/100 DOLLARS (\$515,652.90), 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 Two Hundred and Fifty Thousand and no/100 DOLLARS (\$16,250,000.00), Tenant shall pay to Landlord as additional rental an amount equal to one per cent (1%) of gross sales exceeding Sixteen Million Two Hundred and Fifty Thousand and no/100 DOLLARS (\$16,250,000.00).

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 twenty fifth (25th) day following the end of each month during the lease term, deliver to Landlord a statement reflecting the true amount of the gross sales for the previous month.~~ 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 at any time, 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 preceding shall not preclude Landlord from combining the information regarding Tenant with information regarding other tenants in the shopping center of which the demised premises are a part and utilizing the combined information in such manner as Landlord deems appropriate.

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 demised premises, except that the following shall be excluded:

or credit, merchandise transferred to a warehouse or

- (a) Sales of merchandise subsequently returned for refund another store of Tenant, discounts on merchandise which shall be allowed to employees of Tenant, or

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merchandise which shall be issued in redemption of trading stamps, if any, which shall have been issued ~~or credit merchandise transferred to a warehouse or~~ free of charge to Tenant's customers at the time of sale of other merchandise or services from the demised premises;

- (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 collected by Tenant and paid over to the appropriate taxing authority 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 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; and
- (d) Service and interest charges for time payment accounts and charge accounts.

~~DELETE~~  
Insert Exhibit 1

~~Should Tenant at any time elect to discontinue the operation of its store, Tenant shall give to Landlord notice in writing of its intention so to do and in such event Landlord shall have the option, to be exercised by notice in writing given to the Tenant at any time after the date of mailing of Tenant's aforesaid notice to Landlord, to cancel and terminate this lease. If Landlord exercises its said option, this lease shall cancel and terminate on the date specified in Landlord's notice and Tenant shall be released from any further liability under this lease. Tenant shall specify, in its notice of intention to discontinue operations, the date upon which such operations shall be finally discontinued, and shall discontinue its operations and vacate the demised premises by such date.~~

~~Tenant shall be entitled, at any time prior to (but not after) 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 22 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 Tenant discontinues the operation of its store (as hereinabove provided) the rent which Tenant 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, provided however that should Tenant elect to reopen its store either as a Kmart store or as another operation which is controlled by a parent, subsidiary, brother or sister corporation to Kmart Corporation then the preceding paragraphs of this Article 4 shall again be in full force and effect.~~

Insert Exhibit 2 and  
Insert Exhibit 3



With respect to any delinquent rent due hereunder, Landlord may, at its election, charge Tenant interest from the date due until the date paid at the lesser of the maximum rate allowed by law or 18% per annum. For all purposes of this lease, the term "rent" shall mean the annual minimum rental called for in Article 3 hereof, the percentage rental called for in this Article 4 and all additional rent and other sums for which Tenant is obligated to pay or to reimburse Landlord under this lease, including but not limited to real estate taxes, common area maintenance charges, ~~indemnities and all sums for which Tenant is obligated to reimburse Landlord under Article 30B hereof.~~

Real Estate Taxes

5. Tenant shall pay and discharge all ad valorem real estate taxes and all assessments, general or specific, levied against the taxable premises during the term of the lease, excluding therefrom payment of general or special assessments which are incurred or levied as a result of Landlord's activity in developing the demised premises for Tenant's occupancy. All such taxes and assessments shall be paid by Tenant on or before the due date thereof. If Tenant fails to do so, it shall also pay all penalties, interest, and other charges which may arise by virtue of Tenant's delinquency. Notwithstanding the foregoing, Landlord may, at any time after any such taxes and assessments due by Tenant, in which event, Landlord's account, in which interest at the rate of 18% per annum, from the date of delinquency, shall be added to the annual rent due

solely in the case of a tax foreclosure or threatened

lease, shall be added to "A" together with the amount paid by Tenant to satisfy the obligations of this lease.

taxable

sole efforts to be made to the taxable premises assessment with a view to the records of the assessment worksheets and the building and building liability for

In the event that neither a separate tax assessment for the taxable premises can be obtained nor an accurate tax liability established from the assessing office records can be determined, the taxes allocable to the taxable premises (and Tenant's share of taxes attributable to the Common Areas) shall be equal to: (1) Tenant's pro rata share of taxes attributable to the Tenant's building, plus (2) Tenant's pro rata share of the taxes assessed against the total land described in Exhibit "A". Tenant's pro rata share of taxes attributable to the Tenant's building shall be computed by multiplying the total tax liability against the buildings located within the land described in Exhibit "A" by a fraction the numerator of which shall be the number of square feet of ground floor area of Tenant's building at the end of such real estate fiscal tax year (excluding the garden shop) and the denominator of which shall be the total number of square feet of ground floor area of all of the buildings located within the land described in Exhibit "A" (including Tenant's building but excluding the garden shop) at the end of such real estate fiscal tax year. Tenant's pro rata share of the taxes assessed against the total land described in Exhibit "A" shall be computed by multiplying the total tax liability against the land described in Exhibit "A" by a fraction, the numerator of which shall be the number of square feet of land within the demised premises and the denominator of which shall be the number of square feet of land within the land described in Exhibit "A". In no event shall Tenant be responsible for the payment of taxes and assessments incurred or levied on other buildings existing on the land, other than the taxable premises.



In the event Tenant constructs, as provided in Article 16, hereof, additional buildings or structures on any portion of the land described in Parcel A of Exhibit "A", or improvements to Tenant's building constructed by Landlord, said additional buildings or structures shall be excluded from the taxable premises. Said additional buildings or other structures, and said improvements to Tenant's building, shall be separately assessed and all ad valorem taxes and assessments levied thereon shall be paid and discharged by Tenant.

The date of levy of all ad valorem real estate taxes shall be deemed to be the date specified by each applicable taxing jurisdiction for which such taxes become a lien on the taxable premises. The Tenant's liability and obligation hereunder to pay such ad valorem real estate taxes shall be fully accrued, fixed and final on the date of levy thereof.

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 income, profit, inheritance, estate, succession, gift, franchise, or transfer taxes which are or may be imposed upon Landlord, its successors or assigns, by whatsoever authority imposed or howsoever designated.

Written evidence of the payment of taxes and assessments hereunder shall be furnished by Tenant to Landlord upon Landlord's written request therefor.

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 or the Shopping Center 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 or other damage to Landlord, and will promptly pay the disputed tax or assessment and all related charges if the continued non-payment could result in the foreclosure or loss of the Shopping Center, or any portion thereof, or other damage to Landlord. Landlord shall, at Tenant's expense, cooperate in the institution and prosecution of any such proceedings initiated by Tenant and will execute any documents required therefor. Tenant shall defend, indemnify and hold Landlord harmless from and against any and all loss, cost and expense, including court costs and reasonable attorney's fees, arising in connection with Tenant's election to contest the validity or amount of any tax or assessment.

Should Landlord institute proceedings to contest the validity or the amount of any tax or assessment levied against the Shopping Center, Tenant will cooperate in such proceedings; provided, however, that Landlord shall take no action which will cause or allow the institution of any foreclosure proceedings or similar action against the demised premises which might result in the termination of this lease.

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, 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. If no refund shall be secured in any given proceeding, the party instituting the proceeding shall bear the entire cost.

New Building by Landlord

force majeure

May 1, 1992

January 1, 1993

March 1, 1993

Insert Exhibit 4

Drawings and Specifications

6. Tenant's said building and site improvements shall be completed and delivered to Tenant promptly and with due diligence. If the performance by Landlord of any of its obligations hereunder is delayed by reason of ~~an event described in Article 33 hereof,~~ including the act, failure to act or neglect of Tenant, act of God, strike, labor dispute, boycott, governmental restrictions, riot, insurrection, war, catastrophe, act of the public enemy, or ~~delay by CP&L in relocating those existing transmission lines as shown on Exhibit B,~~ 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 ~~February 1, 1992.~~ If for any reason other than as described in the first sentence of this Article 6 Landlord shall fail to comply fully with this warranty, Landlord shall so notify Tenant in writing and in such event Tenant shall have, as its exclusive remedy, the option to terminate this lease within thirty (30) days thereafter by notice to Landlord; provided, further, in the event that, for any reason other than as described in the first sentence of this Article 6, 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 ~~October 1, 1992~~ then Tenant shall, as its exclusive remedy, have the further option of terminating this lease by notice to Landlord by ~~November 1, 1992.~~ 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.

7. Tenant's said building and site improvements shall be constructed by Landlord, at its sole cost and expense, in accordance with the working drawings and specifications prepared by Landlord 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-0798 containing such additions, changes, and modifications as are more particularly set forth in that certain letter dated January 14, 1991, written by Stephen K. Li to Tom Corbett, a copy of which letter is attached hereto and marked Exhibit "C".

Said typical plans and specifications are subject to the following exceptions and such other deviations as may be ~~requested by Landlord and~~ 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. thirty (30) ~~Within twenty (20) days~~ after receipt of such working drawings and specifications, Tenant shall in writing inform Landlord of required revisions or corrections

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thirty (30)

thirty (30)

Insert Exhibit 5

thereto which are necessary to conform said working drawings and specifications to 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 which shall take place within ten (10) days after Tenant's receipt of same. In the event Tenant shall not inform Landlord of such desired revisions or corrections within said twenty (20) days, said working drawings and specifications shall be deemed approved and accepted for the purposes hereof.

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 less any amounts expended by Landlord based upon said criteria prior to its change. In the event such criteria changes result in extra construction costs to Landlord, then Tenant shall pay Landlord, as additional rent hereunder, the extra construction costs resulting from such changes.

Guarantee of Material

8. Landlord shall guarantee all work performed by or for Landlord in the construction of Tenant's building and site improvements against defective workmanship and materials for a period of one (1) year from commencement of the lease term, unless a shorter period of time is expressly stated under a section of the criteria documents and/or job specifications. Landlord shall assign to Tenant which assignment shall be without recourse after the one year period referred to in the preceding sentence any and all guarantees of workmanship and materials which it may receive.

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 sales floor trade fixtures, storing merchandise, training personnel and other pre-opening activities. Landlord's "completion of Tenant's building" shall be construed to mean the building is substantially completed except connections to Tenant's equipment, i.e. permanently enclosed, floor covering installed, electrical system complete, mechanical systems functioning on controls, toilet facilities complete for both sexes, fire protection system including alarms complete. Notwithstanding the foregoing, if, during the aforesaid sixty-seven (67) day period during Tenant's stocking of the demised premises, Tenant generates gross sales from the demised premises, the amount thereof shall be deemed amounts made during the first lease year and reported in gross sales for the first lease year. Tenant's right to enter the demised premises is conditioned upon Tenant's delivery to Landlord of the certificates or policies of insurance called for elsewhere in this lease. Tenant and each of its contractors, suppliers, vendors, materialmen, employees and invitees who enter the demised premises before the lease term commences shall conduct itself so as to not interfere with Landlord, or Landlord's contractors, vendors, materialmen, employees or other invitees in performing their work. Any prior entry by Tenant shall be under all of the terms of this lease (other than the obligation to pay minimum rent) and at Tenant's sole risk. Landlord shall not be liable for any personal injury, death or property damage (including damage to any personal property which Tenant may bring into, or any work which Tenant may perform in, the demised premises) which may occur as a result of any prior entry by Tenant or any of its contractors, suppliers, vendors, materialmen, employees or other invitees unless such personal injury, death or property damage is caused by the negligence of Landlord or Landlord's agents.

real estate taxes and common area maintenance charges.

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", 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", all sidewalks, driveways, streets, curbs, acceleration, deceleration and stacking lanes, traffic controls, and signals directional signs and related improvements in accordance with said working drawings and specifications and the requirements of any governmental bodies.

Landlord covenants and represents that at the commencement of the lease term, there shall be 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 Exhibit B.

Landlord also covenants that the area within the demised premises provided for the parking of automobiles shall during the lease term be sufficient to accommodate not less than Four Hundred Fifty Seven (457) automobiles on the basis of arrangement depicted on Exhibit B.

Insert Exhibit 6

~~Landlord further covenants that the aggregate area depicted on Exhibit "B" provided for the parking of automobiles shall during the lease term (if Landlord later constructs the buildings depicted on Exhibit B as "Phase II" development) be sufficient to accommodate not less than Five Hundred Two (502) automobiles on the basis of arrangement depicted on Exhibit "B".~~

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 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.

Indem-  
nifi-  
ca-  
tion  
and  
Liability  
Insurance

Notwithstanding the foregoing, at any time while Tenant's net worth shall exceed One Hundred Million Dollars (\$100,000,000.00), Tenant may elect to self-insure its obligation to insure the demised premises as set forth above.

10A. Tenant hereby agrees to indemnify and save harmless Landlord its directors, officers, employees and agents from any injury, claim, liability, loss or expense, including attorney's fees and expenses resulting from an injury or death to any person or damage to any property happening on or about the demised premises unless caused solely by Landlord's intentional or negligent acts. Tenant agrees to carry commercial general liability insurance coverage (1986 ISO occurrence form or the equivalent) on or about the demised premises with a company that is: (i) admitted in the state in which the demised premises are located; and (ii) currently rated B+6 or better by Best's. Such insurance shall stipulate limits of liability of not less than \$3,000,000 for each occurrence, bodily injury and/or property damage combined. The policy affording such coverage shall (i) name Landlord as an additional insured, (ii) provide that it will not be cancelled or reduced in coverage without 30 days' prior written notice to Landlord and (iii) be primary coverage, so that any insurance coverage obtained by Landlord shall be in excess thereto. The indemnification and insurance provisions of this Article 10A reflect distinct, independent undertakings of Tenant. Accordingly, Tenant's compliance with one shall not obviate or in any way affect Tenant's obligation to comply with the other. A certificate of such coverage from the insurer shall be furnished to Landlord prior to Tenant's entry into the demised premises and thereafter promptly upon request by Landlord.

Landlord hereby agrees to indemnify and save harmless Tenant, its directors, officers, employees and agents from any injury, claim, liability, loss or expense, including attorney's fees and expenses, resulting from an injury or damage to any person or property happening on or about all common areas or the demised premises which is caused by the failure of Landlord to maintain the common areas or demised premises or make repairs to the common areas or demised premises as required herein unless cause solely

by Tenant's intentional or negligent acts. Landlord further agrees to carry, at its expense, public liability insurance covering, but not limited to, all common areas and any other area of the shopping center under the control of Landlord. Such insurance shall (i) be with a company admitted in the state in which the demised premises is located; (ii) be issued by a carrier rated B+6 or better by Best's; and (iii) stipulate limits of liability of not less than \$3,000,000 each occurrence, Single Limit Bodily Injury and Property Damage combined. A certificate evidencing such coverage and providing for forty-five (45) days' written notice to Tenant's Risk Management Department prior to cancellation or non-renewal shall be furnished to Tenant within forty-five (45) days after Tenant has opened its store for business.

or carry insurance coverage

If Landlord fails to indemnify Tenant as provided herein, Tenant may, at its option, without waiving any remedies it may otherwise have, pay such cost owing and due by Landlord. Landlord shall reimburse Tenant within ten (10) days' receipt of notice from Tenant of such payments made by Tenant on account of Landlord. If Tenant fails to indemnify Landlord as provided herein, Landlord may, at its option, without waiving any remedies it may otherwise have, pay such costs owing and due by Tenant. Tenant shall reimburse Landlord within ten (10) days receipt of notice from Landlord of such payments made by Landlord on account of Tenant and such costs shall constitute additional rent hereunder.

or carry insurance coverage

Nothing contained in this lease shall constitute Landlord as the agent of Tenant in construction of the demised premises and the shopping center, and Tenant shall have no control or authority over the construction of the demised premises and the shopping center beyond the right to reject the tender of the demised premises as provided herein. Tenant shall not be responsible in any manner for any loss or damage arising from the sole negligence of Landlord, any contractors or subcontractors, or any of their employees, agents or servants by reason of Landlord's construction of the demised premises and the shopping center. Landlord shall indemnify Tenant and save Tenant harmless from and against all claims, suits, liabilities and expenses, including attorney's fees, for damage or injury to persons or property arising out of the sole negligence or willful misconduct of Landlord or Landlord contractor in performing work in the demised premises and the shopping center. Similarly, Tenant shall indemnify Landlord and save Landlord harmless from and against all claims, suits, liabilities and expenses, including attorney's fees, for damage or injury to persons or property arising out of the sole negligence or willful misconduct of Tenant or Tenant's contractors in performing work in the demised premises.

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" 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 reasonable action to prevent said unauthorized utilization, including the erection of fences or other barricades if necessary.

Should Tenant, at any time, after obtaining the prior written consent of Landlord, not to be unreasonably withheld 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, injury to persons and loss of life sustained in connection therewith. In addition, Tenant shall be responsible for, and shall promptly repair at Tenant's sole cost and expense, 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.

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 after the date upon which (i) Tenant's building and site improvements shall be completed in accordance with said working drawings and specifications and the possession thereof shall be tendered to Tenant, and (ii) all of the representations and warranties set forth in Article 12 to be fulfilled by such date 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 (i) and (ii) 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, as its exclusive remedy, 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.

**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 located in that area designated as Phase I substantially in accordance with the site plan depicted on said Exhibit "B", including completion of said common areas which are a part of said Phase I in accordance with the provisions of Article 10 hereof.

Landlord also represents, warrants and covenants that it shall, prior to the commencement of the lease term, be the fee simple owner of all outlots as depicted on Exhibit "B" and that Landlord will comply with the building restrictions shown on Exhibit B with respect to such outlots.

Landlord represents, warrants and covenants that without the written consent of Tenant, which consent shall not be unreasonably withheld, no buildings shall be constructed in Phase II as depicted on Exhibit "B" except within the building envelope lines outlined in red as shown on Exhibit "B". Landlord also represents, warrants and covenants that the total floor area of the buildings constructed within the building envelope lines shall not exceed the total floor area for Phase II shops shown on Exhibit "B" and that no single tenant space in Phase II shall be constructed larger than 60,000 square feet for a single tenant.

Landlord further represents that the total number of parking places provided in Phase I and Phase II shall never be less than parking places for each 1,000 square feet of gross leasable area.

Insert Exhibit 7 →

~~Landlord further represents, warrants and covenants that the land described in Exhibit "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 B-6. 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 which are to be fulfilled by the commencement of the lease term 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 percentage rental called for in Articles 3 and 4 hereof; provided, further, in lieu thereof, Tenant shall pay monthly in arrears one percent (1%) of said gross sales (accompanied by gross sales



reports) 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 (i) completing said representations and warranties at Landlord's cost and expense plus interest at the lower rate of eighteen percent (18%) per annum or the highest rate not prohibited by law, (ii) continue to pay monthly in arrears one percent (1%) of said gross sales until Landlord's said representations and warranties shall be fulfilled or (iii) terminating the lease by notice to Landlord, which notice shall state an effective date of termination of not less than sixty (60) nor more than ninety (90) days from the date of such notice.

Options  
to Extend  
Lease

✓ 13. (a) Tenant shall have seven (7) successive options to extend the term of this lease for an additional period of five 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. Tenant's right to extend the lease term as provided herein is subject to the express condition that Tenant shall not, at the time any extended term is to commence, be in default of any of its obligations under this lease of which Tenant has been notified and been given an opportunity to cure. Time shall be of the essence with respect to the sending of Tenant's exercise notice. If Tenant fails to timely exercise or is not entitled to exercise any option to extend this lease as provided herein for any extended term, the provisions of this Article 13 shall be of no further force or effect. Any extension of this lease as permitted herein shall be on the same terms, provisions and conditions as existed during the initial term (other than this Article 13(a)).

(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.

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, 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 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 including resurfacing (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 sightly and serviceable condition, free of chuck holes, fissures and cracks.

~~Tenant shall also make and pay for all repairs and replacements, subject to Landlord's direction and supervision, to the remainder of the shopping center necessitated by the negligence or willful act of Tenant or any of Tenant's employees, agents, or contractors.~~

Notwithstanding the foregoing provisions of this Article 15, 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, sightly and serviceable condition. Landlord shall further maintain all landscaped areas.

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

For purposes of this Article, the costs of maintaining the common areas and common facilities shall mean the following: (1) all amounts paid for cleaning and sweeping (which shall be performed as often as necessary but not less than once weekly) and restriping (which shall be done not less than once every two years) of the parking areas, sidewalks and driveways, including snow and ice removal, which shall be performed as often as necessary; ~~(2) maintenance repairs and resurfacing of all driveways, sidewalks, entrances, streets, parking areas and other areas which Landlord is required to maintain hereunder;~~ (3) maintenance and repair of planted or landscaped areas (including pest removal therefrom); (4) maintenance, repair and replacement of bulbs and light standards with respect to the parking lot lighting; and electrical cost of lighting if Tenant's parking lot lighting is not metered directly into Tenant's meter as provided in this Article; (5) and wages and salaries of persons directly and actually performing services described herein. (6) all water, gas and sewer charges, and (7) security costs provided that Tenant's proportionate share thereof shall not exceed \$750.00 in any given month during the initial 3 years of the term of this Lease. The cost of maintaining the common areas and common facilities shall not include real estate taxes, capital expenses, depreciation, permit fees, electric lighting charges beyond one hour both before and after Tenant's normal business hours unless Tenant is operating during extended hours, rubbish removal for other tenants, or other administrative expenses, including overhead.

Landlord shall maintain accurate records with respect to the aforesaid costs and shall submit to Tenant a bill not more often than every 30 days during the term of the lease for the amount required to be paid by Tenant hereunder. Such bill will set forth the items and amounts charged to Tenant in reasonable detail and will reflect the calculations of Tenant's obligation. With such bill, Landlord shall also submit to Tenant copies of paid receipts to support each said item and amount. Tenant shall pay such amounts within thirty (30) days after receipt of Landlord's billing therefor.

Tenant may, upon seven (7) days notice, have Landlord's records of common area expenditures for the previous twelve (12) month period audited at Landlord's principal office by Tenant's accountant; should such audit disclose a net overpayment by Tenant, Landlord shall remit said overpayment upon demand. Should such audit disclose a net underpayment by Tenant, Tenant shall remit as additional rent the amount owed promptly to Landlord.

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 Parcel A of Exhibit "A". If Tenant shall elect to maintain the

common areas located within Parcel A of Exhibit "A", then, (a) Tenant shall not during such period be required to make any contributions to the common area costs as hereinabove defined, however, Landlord shall maintain the remaining portions of the common area described in Exhibit "A", (b) Tenant shall maintain such common areas located within Parcel A up to the same standards as is required above of Landlord with respect to the balance of the common areas and (c) Tenant will defend, indemnify and hold harmless Landlord from and against any and all loss, cost, liability and expense, including reasonable attorney's fees and court costs, arising out of any claim of injury, death or property damage occurring in or about the common areas located within such Parcel A.

Unless otherwise specified in Tenant's construction criteria referred in Article 7 (Drawings and Specifications), Landlord shall, ~~at Tenant's sole cost and expense,~~ have that portion of the common facilities lighting standards located within the land described in Parcel A of Exhibit "A" metered directly into Tenant's meter and Tenant shall be responsible for the cost of supplying electricity thereto. The balance of the common facilities lighting standards shall be metered into the meters of Landlord's other tenants as depicted on Exhibit "B" or into Landlord's own meter and Landlord's other tenants or Landlord shall be responsible for the cost of supplying electricity thereto.

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, which shall be necessary to protect the buildings or contents and/or to keep the ~~common areas in a neat, clean, and orderly condition and which have not been made by Landlord within a reasonable time after notice from Tenant may be made by Tenant and the cost of such repairs not to exceed Five Hundred Dollars (\$500.00) in any one instance, may be deducted by Tenant from rentals subsequently accruing hereunder.~~

thereof or to prevent injury or loss of life

One Thousand Five Hundred Dollars (\$1,500.00)

**Alterations and Additional Construction**

16. Tenant may, at its own expense, from time to time expand its building, or make alterations, additions or changes, structural or otherwise, in and to its buildings or construct additional buildings or structures on any portion of the demised premises, as it may deem necessary or suitable; provided, however, Tenant shall obtain Landlord's written consent to the final working drawings and specifications for structural alterations, additions or changes prior to commencing construction thereof; provided further, Landlord shall not withhold its consent thereto if the structural integrity of the buildings will not be impaired by such work. 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.

Gross sales made in or from said expansions and/or additions shall be excluded from gross sales as defined in Article 4 of this lease and provided further, said additional buildings or structures shall be excluded from the taxable premises. 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.



Utilities

✓ 17. Landlord covenants and agrees that the demised premises shall be served with gas, electric, telephone, water, and sewer utilities as of the commencement of the lease term. Tenant shall pay all charges for utility raw materials and services (gas, water, sanitary sewer, telephone, electricity, etc.) furnished to the demised premises during the lease term.

Landlord may provide a disposal or septic tank system in lieu of public sanitary sewer, subject 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 applicable to 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 immediate structural changes, including but not limited to, the erection of a fire escape or exit, or (b) require immediate 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. Notwithstanding the foregoing nothing contained within this Article 18 shall require Landlord to make changes to the demised premises if (y) the demised premises are "grandfathered" under the terms of any requirement, rule or order or regulation which would otherwise be applicable thereto or (z) the legal requirement necessitating the change becomes applicable because of Tenant-initiated alterations or additions to the demised premises.

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. Accordingly, if Tenant recovers a money judgment against Landlord, the judgment shall be satisfied only out of, and Tenant hereby agrees to look solely to, the interest of Landlord in the shopping center of which the demised premises are a part and Landlord shall not be liable for any deficiency. In no event shall Tenant have the right to levy execution against any property of Landlord other than its interest in the said shopping center.

Casualty Insurance: Damage to Demised Premises: Waiver of Subrogation

20. From and after the "date of occupancy by Tenant," as that term is defined in Article 11 hereof, should Tenant's net worth (determined in accordance with good and accepted accounting principles) at any time be less than One Hundred Million Dollars (\$100,000,000.00), Tenant shall immediately notify Landlord of such fact and, upon written request of Landlord or Landlord's mortgagee, Tenant shall procure all risk coverage upon all buildings erected on the demised premises in an amount equal to one hundred per cent (100%) of the replacement cost thereof above the foundation. At any time while Tenant's net worth shall exceed One Hundred Million Dollars (\$100,000,000.00), Tenant may elect to self-insure its obligation to restore. Tenant hereby warrants and represents unto Landlord that Tenant's net worth (determined as aforesaid) is, as of the date of this lease, equal to or greater than One Hundred Million Dollars (\$100,000,000.00).

Policies of fire insurance procured pursuant to this Article shall assure and be payable to Landlord, Tenant and Landlord's mortgagee as their interests may appear. Provided that no uncured breach or default by Tenant exists at the time insurance proceeds become payable under any such policy, such proceeds shall be paid over to Tenant as repair and restoration is completed to reimburse Tenant for the cost thereof.

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, any buildings constructed on the demised premises shall be damaged or destroyed (partially or totally) by fire or any other casualty Tenant shall, at its expense, promptly and with due diligence either (1) repair, rebuild and restore the same as nearly as practicable to the conditions 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 Kmart 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 the last two years of the 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, within which to remove its property from the demised premises. Tenant's occupancy during said sixty (60) day period shall be rent free unless, during such time Tenant generates gross sales from the demised premises, in which event the annual minimum rental called for in Article 3 hereof and the additional rental called for in Article 4 hereof shall continue to be paid during such time. If Tenant is carrying all risk insurance to one hundred per cent (100%) 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 mortgagee for an amount equivalent to the insurance proceeds that would have been paid had insurance been in force. 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.

During any period commencing upon the date of any such damage or destruction by fire, the elements or any other casualty whatsoever, and ending upon the "date of reoccupancy by Tenant", the annual minimum rental and any other charges payable under this lease shall abate in the proportion that the part of Tenant's buildings which shall be untenable shall bear to the whole. The term "date of reoccupancy by Tenant", as used herein, shall be the first to occur of the following two dates: (a) the date upon which Tenant shall open for business in that part of Tenant's buildings rendered untenable by such damage or destruction, or (b) the date which shall be sixty (60) days after the date of completion of the repairs, rebuilding and restoration required of Tenant herein.

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 conditions existing just prior to such damage or destruction; or alternatively Landlord shall be required to clear, clean and raze the fire damaged buildings.

Landlord and Tenant hereby release and waive all claims, rights of recovery and causes of action that either party or any party claiming by, through or under such party may now or hereafter have by subrogation or otherwise against the other party

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or against any of the other party's officers directors, shareholders, partners or employees for any loss or damage that may occur to the shopping center or the contents thereof which were covered risks under the terms of any policy or policies of insurance maintained or required under the terms of this lease to be maintained by the injured party; provided, however, that the waiver set forth in this Article 20B shall (a) be effective only to the extent the injured party (i) is compensated for its loss by the policy or policies of insurance maintained by it, or (ii) would have been compensated for its loss by the insurance it was required but failed to maintain or, (iii) in the case of Tenant while self-insured, would have been compensated under the terms of an all-risk property insurance policy (or ISO special form or its equivalent) on the building or buildings on the demised premises (including alterations, expansions and additions thereto) in an amount equal to one hundred percent (100%) of the replacement cost thereof above the foundation and under the terms of a fire and extended coverage insurance policy, with vandalism, malicious mischief, and sprinkler leakage endorsements, on all of Tenant's personal property, improvements and betterments located in or about the demised premises in an amount not less than the full replacement cost thereof. (b) be ineffective against any insurer of Landlord or Tenant to the extent that the waiver is prohibited by the laws or insurance regulations of the State of North Carolina or would invalidate any insurance coverage of Landlord or Tenant, respectively, and (c) not apply to any deductibles on insurance policies carried by Landlord or to any coinsurance penalty which Landlord might sustain, or to any loss or damage caused by vandalism, willful misconduct or any other criminal or malicious act or intentional wrong. Landlord and Tenant hereby agree to cause (if available) an endorsement to be issued to their respective insurance policies recognizing this waiver of subrogation. ~~Tenant shall pay to Landlord, promptly on demand and as additional rent hereunder, any increase in Landlord's insurance premiums which result from any casualty with respect to which Tenant has an indemnification obligation.~~

Insert Exhibit 8

Eminent Domain

✓ 21. ~~In the event all of Tenant's buildings constructed by Landlord shall be expropriated this lease shall automatically terminate or in the event 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, either Landlord or 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 the other party hereto of such election so to terminate within ninety (90) days from the date of such dispossession.~~

and other charges

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, but only to the extent of the award paid to Landlord by the expropriating authority 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 shall 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. Notwithstanding the foregoing, Landlord's obligation to restore after a taking shall be limited to the demised premises as originally constructed by Landlord hereunder and shall not extend to any improvements thereto or extensions or additions elsewhere on the demised premises made by Tenant subsequent to the commencement of the lease term.

Without limiting the foregoing, in the event that any of the land described in Parcel A of Exhibit "A" shall be expropriated by public or quasi-public authority and Landlord shall be unable or unwilling to substitute equivalent and similarly improved lands contiguous to and properly integrated with the remainder of the site depicted on Exhibit "B", 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 Parcel A of Exhibit "A", then, in such event, Tenant shall have the option to terminate this lease at any time within twelve (12) months after such deprivation becomes effective by giving written notice to Landlord.

In the event this lease shall be terminated pursuant to this Article, any annual minimum rental and other charges paid in advance shall be refunded to Tenant, and Tenant shall have an additional sixty (60) days 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 (subject to the following paragraph) shall assign to Tenant without recourse 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 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's occupancy during said sixty (60) day period shall be rent free unless, during such time, Tenant generates gross sales from the demised premises, in which event the annual minimum rental called for in Article 3 hereof and the additional rental called for in Article 4 hereof shall continue to be paid during such time.

Tenant shall not be entitled to share in any award made by reason of expropriation of Landlord's 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 said compensation, damages, or award is made by reason of the expropriation of the buildings or improvements constructed or made by Tenant.

Use, Assignment and Subletting 22. The premises hereby demised may be used for any lawful purpose. Except as provided in Article 4 hereof, 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 "Kmart" 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 "Kmart", 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 his lease shall not create in Landlord any right, title or interest in the aforesaid mark.



Subject to Landlord's prior written approval and Tenant's strict compliance with all applicable permitting and other legal requirements, Tenant shall have the option to erect at its sole cost and expense upon any portion of the demised premises signs of such height and other dimensions as Tenant shall determine, bearing such legend or inscription as Tenant shall determine. Any and all signs constructed by Tenant including Tenant's identification sign on the "Shopping Center Pylon" as discussed hereinbelow shall thereafter be maintained and repaired by Tenant at Tenant's sole cost and expense.

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

Landlord shall, subject to applicable governmental laws, statutes and ordinances, at Landlord's sole cost and expense, install one (1) shopping center pylon sign at the location designated as "Shopping Center Pylon" on Exhibit "B", attached hereto. The Shopping Center Pylon shall be designed to permit the installation of other identification signs on the same and Tenant shall have the right to install or have installed its identification sign on the Shopping Center Pylon. In the event Tenant shall elect to install or have installed its identification sign on the Shopping Center Pylon, Tenant shall reimburse Landlord for a portion of the cost of installing said Shopping Center Pylon; Tenant's portion of said cost shall be equal to the cost of said installation multiplied by a fraction, the numerator of which shall be the square foot area of Tenant's identification sign installed on said Shopping Center Pylon and the denominator of which shall be the square foot area of all identification signs installed or to be installed on said Shopping Center Pylon, including the shopping center sign. Landlord agrees that it will not allow the placement of other identification signs on the Shopping Center Pylon that shall be larger than the identification sign permitted to be placed on the Shopping Center Pylon by Tenant. Landlord also agrees that Tenant's identification sign shall, at Tenant's option, be placed at the top of or in the first position on Landlord's Shopping Center Pylon sign. Landlord warrants that no identification sign other than that of the name of the Shopping Center or of a shopping center tenant shall be placed on the Shopping Center Pylon.

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 (except in instances of non-payment of rent, in which event the period shall be fifteen (15) days) after notice to Tenant of such default, then Landlord may, by giving notice to Tenant at any time thereafter either (a) terminate this lease, or (b) terminate Tenant's right to possession of the demised premises without terminating this lease, re-enter the demised premises by summary proceedings or otherwise, expel Tenant and remove all property therefrom, (and store the same at the expense of Tenant or dispose~~

Delete and  
Insert Exhibit 9

*ju*

INITIALS  
*ju*

of the same for cash in which event the net sales proceeds received by Landlord shall be credited to Tenant's account to offset the deficiency due hereunder) 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 obligations herein (including but not limited to Common Area Maintenance and ad valorem property taxes) called for herein less the avails of reletting, if any, after deducting therefrom the reasonable cost of obtaining possession of said premises (including court costs and reasonable attorney's fees incurred) and of any repairs and alterations necessary to prepare it for reletting. If Landlord avails itself of alternative (b) hereof, same shall not be deemed to be an election of remedies but Landlord may, at any time thereafter, terminate this lease pursuant to alternative (a) hereof. If and when Landlord elects to proceed under alternative (a) hereof, Tenant shall pay to Landlord all rent and other amounts accrued hereunder to the date of termination plus interest thereon as specified elsewhere in this lease together with liquidated damages in the amount of the total rent and other sums required hereunder to be paid by Tenant during the remainder of the term minus the then present fair rental value of the demised premises for such period. If and for so long as Landlord elects to proceed under alternative (b) hereof, then any and all monthly deficiencies so payable by Tenant shall be paid monthly on the date herein provided for the payment of rent. Tenant shall not be entitled to any excess of any rent obtained by reletting over the annual minimum rent herein reserved. 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 by Landlord provided that, within such thirty (30) day period, Tenant has commenced to cure such default and Tenant thereafter prosecutes such curing diligently and continuously to completion. Except for the legal remedy of damages and the equitable remedies of injunction and specific performance, the remedies of Landlord herein shall be exclusive of any other remedies. With respect to the payment of rent, default shall be deemed cured, and Landlord shall have no right to terminate this lease or take other action against Tenant if Tenant pays all rental then due within fifteen (15) days after receipt of written notice from Landlord that such rent is past due.

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 so to do; provided, however, neither bankruptcy, insolvency, an assignment for the benefit of creditors nor the appointment of a receiver shall affect this lease or permit its termination so long as the covenants on the part of Tenant to be performed 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 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 to the land described in Parcel A of Exhibit "A", free and clear of any liens.



encumbrances, restrictions and violations (or claims or notices thereof), except as follows:

- (a) Public utility easements not impairing Tenant's use of the demised premises and
- (b) Such minor encumbrances and title exceptions as do not, individually or in the aggregate, materially adversely affect the use or occupancy of the demised premises for retail purposes.

or impose any financial obligations upon Tenant.

Landlord shall, without expense to Tenant and within thirty (30) days after written request by Tenant, furnish (a) copy of Landlord's ALTA Owner's policy showing that Landlord's title is as herein represented, (b) an as-built survey by a licensed surveyor of the land described in Parcel A of Exhibit "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.

Mortgage  
Subor-  
dination

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

Tenant  
Indemnifies  
Landlord

29. During the lease term, and any extension thereof Tenant shall defend, indemnify and hold harmless Landlord from and against all liabilities, obligations, losses, damages, penalties, claims and expenses (including court costs and reasonable attorney's fees) resulting from any injuries to or death of any person or damage to any property occurring in or about the demised premises except those which are caused solely by Landlord's breach or default of this lease, or solely by its negligence or willful misconduct.

Right to  
Cure  
Defaults

30A. In the event Landlord shall neglect to pay when due any obligations on any mortgage or encumbrance affecting title to the demised premises and to which this lease shall be subordinate, or shall fail to perform any obligation specified in this lease, then Tenant may, after the continuance of any such default for thirty (30) days after notice thereof to Landlord, pay said principal, interest or other charges or cure such default, all on behalf of and at the expense of Landlord, and do all necessary work in connection therewith, and Landlord shall on demand, pay Tenant forthwith the amount so paid by Tenant together with interest thereon at the lower rate of eighteen percent (18%) per annum or the highest rate not prohibited by law, and Tenant may to the extent necessary withhold any and all rental payments and other payments thereafter due to Landlord and apply the same to the payment of such indebtedness.

~~30B. In the event Tenant shall neglect to pay any sum when due hereunder or to perform any other obligation specified in this lease, then Landlord may, after the continuance of any such default for thirty (30) days (or, in the case of the nonpayment of rent, fifteen (15) days) after notice thereof to Tenant, pay such amounts or otherwise cure such default, all on behalf of and at the expense of Tenant, and do all necessary work in connection therewith, whereupon Tenant shall upon demand as additional rent hereunder pay to Landlord forthwith the amounts so paid by Landlord together with interest thereon at the lower rate of eighteen percent (18%) per annum or the highest rate not prohibited by law.~~

INITIALS  
*[Signature]*

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

Condition of ✓ 31. At the expiration or earlier termination of the lease  
Premises at term Tenant shall surrender the demised premises, together with  
Termination alterations, additions and improvements then a part thereof, in good order and condition except for the following: ordinary wear and tear, repairs required to be made by Landlord, and loss or damage by fire, the elements and other casualty. All furniture and trade fixtures installed in said buildings at the expense of Tenant or other occupant shall remain the property of Tenant or such other occupant; provided, however, Tenant shall, at any time and from time to time during the lease term, have the option to relinquish its property rights with respect to such trade fixtures (including, but not limited to, air conditioning machinery and lighting fixtures), and from and after the exercise of said option the property specified in said notice shall be the property of Landlord. If Tenant fails to remove its property within fourteen (14) days after the expiration or earlier termination of the lease term, then Tenant shall be deemed to have unconditionally, waived all of its rights, titles and interests in and to such property, whereupon Landlord shall be entitled to remove, demolish, sell or otherwise deal with such property in any manner as Landlord sees fit, without any obligation for reimbursement to Tenant.

Holding Over ✓ 32. In the absence of any written agreement to the contrary, if Tenant should remain in occupancy of the demised premises after the expiration of the lease term, it shall so remain as a tenant, from month-to-month and all provisions of this lease applicable to such tenancy shall remain in full force and effect except that the minimum annual rental called for in Article 3 hereof shall be increased to 150% of its prior amount.

Force  
Majeure 33. If either party shall be prevented or delayed from promptly performing any obligation or satisfying any condition under this lease (other than the payment of minimum annual rental or other monetary sums due under this lease by Tenant) by any cause beyond the reasonable control of such party, then the time to perform such obligation or satisfy such condition shall be extended by an amount of time equal to the delay caused by such event.

Notices 34. Notices required under this lease shall be in writing and deemed to be properly served on receipt thereof if sent by certified or registered mail to Landlord at the last address where rent was paid or to Tenant at its principal office at 3100 West Big Beaver Road, Troy, Michigan 48084 Attention: Vice President Corporate Facilities or to Tenant at 4224 Six Forks Road, Raleigh, North Carolina 27609 Attention: Vice President Shopping Center Division. Date of notice shall be the date on which such notice is deposited in a post office of the United States Postal Service.

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

Successors 36. The conditions, covenants and agreements contained in  
and Assigns this lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns. All covenants and agreements of this lease shall run with the land.

Severability

37. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, unenforceability shall not affect any other provision of this lease, but this lease shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

Choice of Law

38. This lease shall be construed and enforced in accordance with the laws of the State of North Carolina. The language in all parts of this lease shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Landlord or Tenant.

Waiver and Modifications

39. The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the agreements, terms, covenants, conditions or obligations of this lease, or to exercise any right, remedy or election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or obligations of this lease or of the right to exercise such right, remedy or election, but the same shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. This lease may be changed or amended only by a writing signed by the party against whom enforcement thereof is sought.

Memorandum of Lease

40. The parties hereto have simultaneously with the execution and delivery of this lease executed and delivered a Memorandum of Lease which Landlord shall at its sole expense cause to be recorded within sixty (60) days following delivery of this lease and returned to Tenant by Landlord within sixty (60) days thereafter.

Access by Landlord

with prior notice to Tenant and solely during Tenant's normal business hours

41. Landlord, its employees, contractors, agents and representatives, shall have the right to enter the demised premises at any time (a) to clean, maintain, or repair, the demised premises, (b) to show the demised premises to prospective lenders or purchasers and, during the last 6 months of the lease term, to prospective tenants (and Tenant has not exercised an option to extend this Lease pursuant to Article 13 hereof) and (c) in the event of an emergency after first attempting to notify Tenant of such emergency. Entry into the demised premises by Landlord or any other person or firm named in the first sentence of this Article 41 for any purpose permitted herein shall not constitute a trespass or an eviction or entitle Tenant to any abatement or reduction in rent, or constitute grounds for any claim for damages for any injury to or interference with Tenant's business, for loss of occupancy or quiet enjoyment or consequential damages.

after commencement of the lease term

Assignment by Landlord

42. Landlord may assign, in whole or in part, any or all of its rights, titles or interests in and to the shopping center of which the demised premises are a part or this lease without notice to or the consent or other action of Tenant, and, upon such assignment, Landlord shall be relieved of all unaccrued liabilities and obligations hereunder to the extent of the interest so assigned.

Estoppel Certificates

43. From time to time at the request of either party, Landlord and Tenant will promptly and without compensation or consideration, execute, have acknowledged and deliver a certificate stating (a) the commencement date and the scheduled expiration date of the lease term, (b) whether this lease has been amended in any respect and, if so, submitting copies of or otherwise identifying the amendments, (c) whether, within the knowledge of the signatory, there are any existing breaches or defaults by the other party hereunder and, if so, stating the defaults with reasonable particularity and (d) such other information pertaining to this lease as either party may reasonably request.

No Obligation to Construct

and outlined in blue

44. Tenant fully understands and agrees that Landlord has no obligation or duty of any kind or nature to build all or any part of the shopping center other than that designated Phase 1, which includes Tenant's building, common area, and ingress and egress roads, as shown on Exhibit "B".





In the event Landlord constructs Phase II, Landlord shall, prior thereto, construct, at Landlord's sole cost and expense, a 30' (thirty foot) wide, paved access/service drive around the rear of the Phase II buildings to the receiving areas of Tenant's building; said access/service drive being indicated on Exhibit "B" attached hereto, as "Phase II Service Drive". Prior to construction of said drive, Landlord shall submit working drawings and specifications therefor to Tenant for Tenant's approval.

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

WITNESSES:

NORTH HILLS PROPERTIES, INC.

Mary B. Perri

By:

James A. Walker  
James A. Walker, President

Nancy Edmond

Attest:

Carol ter Wee  
Secretary

KMART CORPORATION

Deborah Davis

By:

M. L. Hill  
Vice President

Victoria L. Burkhardt

Attest:

C. S. Lopez  
Assistant Secretary

ACKNOWLEDGMENT

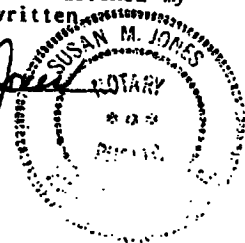
STATE OF NORTH CAROLINA

COUNTY OF WAKE

I do hereby certify that on this 18<sup>th</sup> day of September, 1991, before me, Susan M. Jones, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared James A. Walker and Carol ter Wee, known to me to be the President and Secretary of North Hills Properties, Inc., who, being by me duly sworn, did depose and say that they reside in Raleigh, North Carolina; that they are the President and Secretary respectively of North Hills Properties, 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: 1-7-94

Susan M. Jones  
Notary Public  


**ACKNOWLEDGEMENT**

STATE OF MICHIGAN) SS:  
COUNTY OF OAKLAND)

I do hereby certify that on this 3rd <sup>October</sup> day of ~~September~~, 1991, before me, Marilyn J. Thomas, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared Michael L. Skiles and Charles E. Lotz Jr., known to me to be the Senior Vice President and Assistant Secretary of Kmart Corporation, who, being by me duly sworn, did depose and say that they reside in Rochester and Birmingham, Michigan, respectively; that they are the Senior Vice President and Assistant Secretary respectively of Kmart 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:

MARILYN J. THOMAS  
Notary Public, Oakland County, Mich  
My Commission Expires January 10, 1994

Marilyn J. Thomas  
Notary Public

EXHIBIT 1

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 eighty (180) 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 eighty (180) day period and the Tenant shall be released from any further liability under this lease.

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 paragraphs of Article 4 hereof 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 22 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 22, 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 Article 4 shall be of no further force and effect.

EXHIBIT 2

Should Tenant assign or sublet the demised premises, except to a parent, subsidiary or sister corporation of Kmart Corporation, Tenant shall pay Landlord any rent received from the assignee or subtenant which is in excess of the rent paid by Tenant pursuant to this Lease, after first subtracting from said excess amount any reasonable expenses incurred by Tenant in assigning or subleasing the demised premises. The expenses incurred by Tenant in assigning or subleasing the demised premises shall include but not be limited to any amount expended for brokerage or leasing fees, tenant improvement allowances, wages and salaries of Kmart employees directly involved in assigning or subleasing the demised premises, including any amount related to the assignment or subletting attributable to overhead, and any expenses paid by Tenant pursuant to the Lease after the date Tenant ceases operation in the demised premises as a Kmart discount store, such as rent, real estate taxes, common area maintenance, and insurance obligations, to the extent such expenses are not paid by or are not fully recoverable from an assignee or subtenant of the demised premises.

EXHIBIT 3

Except in the event of termination of this Lease by Landlord as provided in this Article 4, no provision of this Article 4 shall be construed to relieve Tenant of the obligations as set forth in Article 3 regarding Annual Minimum Rent, Article 5 regarding Real Estate Taxes, Article 15 regarding Repairs and Maintenance, Article 20 regarding Damage to the Demised Premises or Article 29 regarding Tenant Indemnification Of Landlord.

EXHIBIT 4

Landlord, however, represents, warrants, and covenants that it will work exclusively with Tenant, in good faith, to comply with the terms of this lease. To the extent there is a breach of this specific warranty, Landlord shall be liable in damages to Tenant and Tenant shall have the right to specifically enforce this agreement against Landlord.

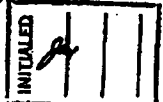


EXHIBIT 5

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

EXHIBIT 6

Landlord further covenants that the area within Exhibit "A", less and except Parcel A of Exhibit "A", provided for the parking of automobiles shall during the lease term (if Landlord later constructs any of the buildings on Exhibit "B" as "Phase II" development) be sufficient to accommodate not less than four and five tenths (4.5) parking spaces for every one thousand square feet of gross leasable building area constructed within Exhibit "A", less and except Parcel A of Exhibit "A".

EXHIBIT 7

Landlord further represents, warrants and covenants that the land described in Exhibit "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 and unconditionally zoned for Tenant's intended use as a discount store, and that all necessary governmental consents, permits and approvals for such use shall have been obtained.

EXHIBIT 8

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.

EXHIBIT 9

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 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.

INITIALED  
  
\_\_\_\_\_  
\_\_\_\_\_

# EXHIBIT A

NORTH HILLS, INC.  
B-4 ZONING BOUNDARY  
U. S. 264 FOREST HILLS ROAD SITE  
AUGUST 20, 1991

Beginning at an existing iron pipe located in the northerly right-of-way of U. S. Highway 264, said existing iron pipe being located N 25° 57' 38" W 138.33' from N. C. Geodetic Monument "FOCS" said monument having coordinates of X=2,310,814.91 Y=724,711.46; thence from the point of beginning thus described running along the northerly right-of-way of U. S. Highway 264 N 64° 00' 06" W 599.77' and N 64° 01' 22" W 228.17' to a point, cornering; thence N 00° 47' 38" E 828.16' to a point, cornering; thence N 42° 13' 58" E 333.67' to a point, cornering; thence S 88° 30' 24" E 178.00' to a point, cornering; S 46° 46' 18" E 117.54' to a point, cornering; thence S 88° 55' 33" E 150.00' to a point, cornering; thence S 01° 04' 27" 88' 55' 33" E 150.00' to a point, cornering; thence S 88° 52' 33" E 200.14' to W 19.83' to a point, cornering; thence S 88° 52' 33" E 200.14' to an existing iron pipe located in the westerly right-of-way of Forest Hills Road (S. R. 1322), cornering; thence along the westerly right-of-way of Forest Hills Road (S.R. 1322) the following courses and distances: S 01° 07' 27" W 438.57' to an existing iron pipe, S 00° 57' 23" W 168.62' to an existing iron pipe, and S 01° 00' 30" W 453.20' to an existing concrete monument, cornering; thence along the sight distance right-of-way at the intersection of U. S. Highway 264 and Forest Hills Road (S.R. 1322) N 38° 54' 30" W 19.95' and S 42° 48' 01" W 90.62' to the point of beginning containing, 22.76 acres.

## PARCEL A

NORTH HILLS, INC.  
X-MART LEASE DESCRIPTION  
U. S. 264-FOREST HILLS ROAD SITE  
AUGUST 20, 1991

Commencing at an existing iron pipe located in the northerly right-of-way of U. S. Highway 264, said existing iron pipe being located N 25° 57' 38" W 138.33' from N. C. Geodetic Monument "FOCS" said monument having coordinates of X=2,310,814.91 Y=724,711.46; thence from the point of commencement along the sight distance right-of-way of the intersection of U. S. 264 Highway and Forest Hills Road (S.R. 1322) N 42° 48' 01" E 90.62' and S 88° 54' 30" E 19.95' to an existing concrete monument and thence along the westerly right-of-way of Forest Hills Road N 01° 00' 30" E 453.20' to an existing iron pipe and N 00° 57' 23" E 73.62' to a point, said point being designated as the Point of Beginning; thence from the Point of Beginning thus described S 89° 59' 14" W 155.0' and N 78° 00' 56" W 330.0' to a point, cornering; thence N 00° 00' 46" W 475.0' to a point, cornering; thence N 49° 08' 46" W 160.0' to a point, cornering; thence W 20° 59' 14" E 112.55' to a point, cornering; thence N 47° 46' 02" W 85.34' to a point, cornering; thence N 42° 13' 58" E 105.0' to a point, cornering; thence S 88° 30' 24" E 178.00' to a point, cornering; thence S 46° 46' 18" E 117.54' to a point, cornering; thence S 88° 55' 33" E 150.00' to a point, cornering; thence S 01° 04' 27" W 19.83' to a point, cornering; thence S 88° 52' 33" E 200.14' to an existing iron pipe cornering; thence along the westerly right-of-way of Forest Hills Road (S.R. 1322), cornering; thence along the westerly right-of-way of Forest Hills Road S 01° 07' 27" W 438.57' to an existing iron pipe and S 00° 57' 23" W 95.00' to the point of beginning containing 9.66 acres.



# EXHIBIT C

January 14, 1991



EXPRESS MAIL

Kmart Corporation  
3100 West Big Beaver Road  
Troy MI 48064-3163

Mr. Tom Corbett  
North Hills, Inc.  
Parkwood Mallard Plaza  
100 Ward Boulevard and Highway 42  
Wilson, North Carolina 27893

Re: Kmart #4752 - Wilson, North Carolina  
NHC NC 264 & Forest Hills Road

Dear Mr. Corbett:

Under my cover letter of August 17, 1990, we did forward to The Sofran Group two (2) sets of Criteria Documents with the set number K-0798, for an 86,479 sq. ft. (Series 35) Kmart. We have been advised by Mr. W. J. Moreland, of our Real Estate Department, that you are now the developer for the above referenced project and assume you are in possession of those documents. Should you find that any of the drawings or specifications mentioned in the letter of August 17, 1990 are missing, please advise.

Management is now requesting possible implementation of a 91,266 sq. ft. building subject to feasibility of site constraints and cost adjustment negotiations. We are, at this time, forwarding to you two (2) new sets of Typical Criteria Drawings and Outline Specifications identified, as before, with the set number K-0798 covering our minimum requirements for the construction of a Kmart for your review and consideration.

The Typical Kmart Criteria Drawings and Specifications consist of the following:

91,266 sq. ft. Kmart dated December 1, 1990 (Series 38)

SD-1	M-1G thru M-4G
L-1, I-1	P-1G thru P-4G
A-1 thru A-12	E-1 thru E-13

Outline Specifications dated December 1, 1990.

Please Note:

1. Site Irrigation is required at this location.

## SITE DEVELOPMENT

Kmart Corporation shall be party to the initial site development decisions. To enable Kmart Corporation to properly evaluate the site conditions and have a meaningful input in these major decisions, the Developer shall submit to Kmart Corporation, in written and drawing form, a description of his proposed preliminary site development design.

The site development design shall encompass all aspects of the proposed Kmart operation i.e. access, site drainage and the relationship of the Kmart 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.



# EXHIBIT C

Mr. Tom Corbett  
North Hills, Inc.  
Re: Kmart #4752 - Wilson, North Carolina

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January 14, 1991

## SITE DEVELOPMENT (Continued)

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 Kmart 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.

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

## BUILDING DESIGN DEVELOPMENT

Kmart Corporation shall be party to the initial design phase of the Kmart building exterior in order to ensure its compatibility with the entire development. Kmart 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 (for compliance with Kmart Corporation minimum requirements) will not be processed unless the above procedures are followed.

These drawings and specifications describe a 91,266 sq. ft. Kmart with the Garden Shop to the right. We are including a Preliminary Layout #K-0798, dated December 28, 1990, for this size and hand store. This drawing also indicates any required modifications to the Typical's for this specific location.

Please advise your consultants regarding the following paragraphs on utilities, services, and the supplemental mechanical/electrical information which augment the enclosed drawings/specifications for the above mentioned location.

# EXHIBIT C

Mr. Tom Corbett  
North Hills, Inc.  
Re: Kmart #4752 - Wilson, North Carolina

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January 14, 1991

Secondary electric service from City of Wilson is acceptable. Power factor correction is not required unless energy conservation codes in effect require improvement.

Uninterruptible natural gas shall be utilized for space heating and other equipment where specified in the Criteria Documents. Two pound (2 psig) gas pressure may not be available from City of Wilson. Building gas piping size changes within the building and deletion of gas regulators must be coordinated with utility if the 2 psig gas at the meter outlet is not available. Coordinate gas pressure shown on the mechanical drawings with the gas utility. In the event that natural gas is not available as required at this site, Landlord shall advise Kmart Corporation, Energy Systems immediately.

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

The Kmart parking lot and service drive lighting shall be connected directly to Kmart switchboard through Kmart 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 Kmart 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.

The following features shall be incorporated into the design:

1. Stockroom air conditioning, per Criteria requirements, is required.

Please be advised that our insurance underwriter is:

Protection Mutual Insurance Company  
17330 Preston Road  
Suite 200C  
L.B. 436 & 442  
Dallas, Texas 75252  
Contact: Mr. G. Charles Strlemer  
Phone: (214) 931-7650

Direct any inquiries to the listed individual at the above address.

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

This project has been assigned a number (#4752) and you are at liberty to proceed with your site development design and building design development packages. Please notify the writer of the names, addresses, telephone numbers and FAX numbers of your Architect and Engineers and notify Mr. C. E. Strom, Manager, Building Division, of the names and addresses of your Contractors as soon as possible.

KICK-OFF MEETING





EXHIBIT C

Mr. Tom Corbett  
North Hills, Inc.  
Re: Kmart #4752 - Wilson, North Carolina

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January 14, 1991

It is required that you, your Architect, Civil Engineer, Electrical and Mechanical Engineers, attend a preliminary meeting at this office to discuss this project in depth.

Your Civil Engineer must bring his Preliminary Site Evaluation/Design and your Architect must bring the "Building Design Package" for our review.

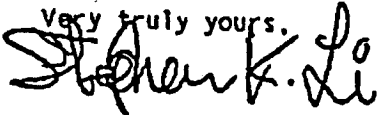
At this meeting you will be furnished with mylar reproducible, CADD magnetic tape or diskette (your choice) to assist your Architect/Engineers in expediting the preparation of the Contract Documents. You will also be furnished any supplementary details that may pertain to this project.

Typical Criteria Documents and the mylar reproducible, CADD magnetic tapes or diskettes are representative of our minimum criteria only. Your Architect/Engineers will, as provided in Division I, Section 1A, 1.02 and elsewhere in the Outline Specifications, remain solely responsible for the total project, including without limitation, structural integrity, consideration of topographic and weather conditions and soil characteristics, and conformance with all applicable codes and other legal requirements (Health Department, etc.).

Please contact Mrs. Cecelia Malin at (313) 643-1213 to arrange this kick-off meeting. A minimum of two (2) weeks advance notice will be required for proper scheduling.

Please Note: It is essential that your Architects/Engineers submit the Contract drawings and specifications at least sixty (60) days before the start of construction.

Very truly yours,



Stephen K. Li, A.I.A.  
Manager, Design Division  
Construction Department

SKL:s11

cc: Mr. J. M. Vachon  
Mr. C. E. Strom  
Mr. W. J. Moreland - SRO  
Mr. C. A. Rodgers  
Mrs. C. Malin  
P. L. File

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