

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

In re:) Case No. 02-B02474
) (Jointly Administered)
KMART CORPORATION, *et al.*) Chapter 11
) Chief Judge Susan Pierson Sonderby
)
Debtors.)

PROOF OF CLAIM DUE TO LEASE REJECTION

1. The undersigned is attorney for claimant, University Plaza Shopping Center, a partnership, and is authorized to file this Proof of Claim on its behalf.

2. The correct address of the claimant to which all distribution checks and notices should be mailed is as follows:

The Ashley Group
2851 Lakewood Village Drive
North Little Rock, AR 72116
ATTN: J. D. Ashley

In addition, copies of all notices should be mailed to the claimant's attorneys, as follows:

J. Maurice Rogers, Esq.
Sam Hilburn, Esq.
Hilburn, Calhoun, Harper,
Pruniski & Calhoun, Ltd.
P. O. Box 5551
North Little Rock, Arkansas 72119

3. This claim is based upon a written Lease of commercial real estate located in Magnolia, Arkansas (Store #9681). A copy of the Lease, as amended, is attached hereto. Also attached hereto is a copy of Statement for Common Area Reconciliations.

4. No judgment has been rendered upon this claim.

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5. This Lease has been rejected by the debtor, which rejection has been approved by this Court's Order of January 25, 2002.

6. Pursuant to 11 U.S.C. § 522(b)(6), the amount of this Claim is as follows:

\$ 233,640.00	Rent Reserved for One Year
<u>62,498.91</u>	Unpaid Amounts as of Petition Date
<u>\$ 296,138.91</u>	Total Claim for Damages Resulting from Termination of Lease of Real Property

7. This claim is free from any charges forbidden by law.

**HILBURN, CALHOON, HARPER,
PRUNISKI & CALHOUN, LTD.**

By *J. Maurice Rogers*
J. Maurice Rogers, Ark. Bar No. 77114
Sam Hilburn, Ark. Bar No. 71044
P. O. Box 5551
North Little Rock, Arkansas 72119
(501) 372-0110

ATTORNEYS FOR UNIVERSITY
PLAZA SHOPPING CENTER

Parties

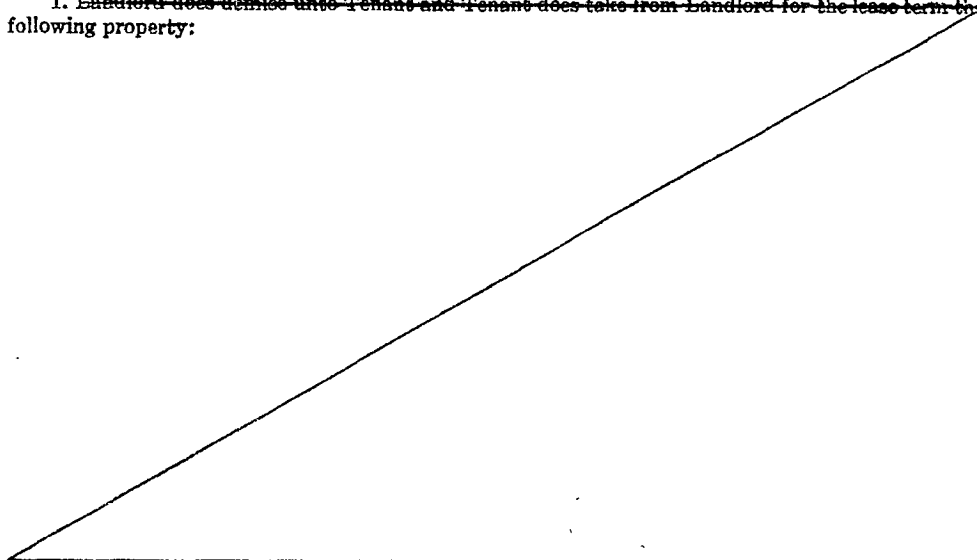
THIS LEASE made and entered into as of this 28th day of August, 1979, between J. D. Ashley and Larry C. Wallace, d/b/a University Plaza Shopping Center, an Arkansas Partnership, ~~corporation~~ having its principal office at 8th Floor, Twin City Bank Building, One Riverfront Place, North Little Rock, Arkansas (herein referred to as "Landlord"), and K MART CORPORATION, a Michigan corporation having its principal office at 3100 West Big Beaver Road, Troy, Michigan 48084 (herein referred to as "Tenant"),

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

SEE RIDER.

Demised Premises

1. ~~Landlord does demise unto Tenant and Tenant does take from Landlord for the lease term the following property:~~



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. SEE RIDER 2A

Annual Minimum Rental

3. Tenant shall, during the lease term, pay to Landlord, at such place as Landlord shall designate in writing from time to time, an annual minimum rental of TWO HUNDRED THIRTY-THREE THOUSAND SIX HUNDRED FORTY AND NO/100 DOLLARS (\$ 233,640.00), unless abated or diminished as hereinafter provided, in equal monthly installments on the first day of each month, in advance, commencing upon the first day of the lease term; provided, however, in the event the first day of the lease term shall not be the first day of a calendar month, then the rental for such month shall be prorated upon a daily basis.

Additional Rental

4. In addition to the aforesaid annual minimum rental, with respect to any lease year during the lease term in which Tenant's "gross sales", as hereinafter defined, shall exceed the sum of SEVEN MILLION AND NO/100 DOLLARS (\$7,000,000.00), Tenant shall pay to Landlord as additional rental an amount equal to one percent (1%) of gross sales exceeding SEVEN MILLION AND NO/100 DOLLARS (\$ 7,000,000.00) up to but not in excess of DOLLARS (\$); and Tenant shall pay to Landlord as additional rental an amount equal to five-tenths of one percent (.5%) of gross sales for such lease year exceeding DOLLARS (\$) up to but not in excess of DOLLARS (\$).

Additional
Rental
(continued)

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 (12) consecutive calendar months from the last day of the month in which said lease term shall commence. Sales for any period preceding the first lease year shall be included in gross sales reported for the first lease year. Tenant shall on or before the thirtieth (30th) day following the end of each lease year or lesser period, deliver to Landlord a statement signed by an officer of Tenant certifying the true amount of the gross sales for such lease year or lesser period. The term "lesser period", as used herein, shall be any period beginning on the first (1st) day of any lease year and ending, by reason of the termination of this lease, prior to the end of such lease year. In the event that a period of more or less than twelve (12) months shall be so required to be included in any such statement, then the dollar amounts referred to in the preceding paragraph shall be proportionately increased or decreased, as the case may be.

Should Tenant at its option operate its fountain and lunch counter prior to opening for other business, such operation shall not be an acceptance of the demised premises, or an acknowledgment that the representations and warranties of Article 12 shall have been fulfilled, or an opening for business under Article 11 or any other provision of this lease, but sales from such operation shall be included in Tenant's reported gross sales for the first lease year.

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

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

- (a) Sales of merchandise subsequently returned for refund or credit, merchandise transferred to a warehouse or another store of Tenant, discounts on merchandise which shall be allowed to employees of Tenant, or merchandise which shall be issued in redemption of trading stamps, if any, which shall have been issued free of charge to Tenant's customers at the time of sale of other merchandise or services;
- (b) Any and all taxes levied upon, assessed against, or measured by the receipt or purchase of merchandise by any occupant of said demised premises, and any and all occupational sales taxes and other taxes levied upon, assessed against, based upon, or measured by (i) such occupant's gross receipts, or any part thereof, or (ii) the sale or sales price of merchandise and services, or either, and which shall be payable by such occupant, whether or not collected by such occupant from its customers as reimbursement or as agent of the taxing authority, and whether or not the same shall be commonly known as a sales tax, use tax, retailers' occupational tax, gross receipts tax or excise tax; provided, however, said taxes to be excluded from gross sales shall not include any net income tax, franchise, or any other tax not levied upon or computed upon gross sales or gross receipts, or any portion thereof; provided further, said taxes to be excluded from gross sales shall be excludable regardless of whether imposed under any existing or future orders, regulations, laws, statutes or ordinances;
- (c) Receipts from cigarettes, lockers, stamp machines, public telephones, pay toilets, "kiddie rides", money orders and all licenses sold to the public;
- (d) Service and interest charges for time payment accounts and charge accounts;
- (e) ~~All sales of merchandise or services made by any food market which shall occupy any portion or portions of the demised premises; and~~
- (f) All sales of automotive gasoline or diesel fuel.

In the event Tenant shall assign or sublease as provided in Article 22, Tenant's Assignee and/or Subtenant shall submit to the Landlord within sixty (60) days following the end of each lease year a written statement signed and certified by the Assignee and/or Subtenant to be a true and correct statement of the amount of gross sales during the preceding lease year, and the Assignee and/or Subtenant shall at the same time pay to the Landlord the amount of percentage rent, if there be any due, as shown by said statement

Upon Tenant's decision to assign or sublease the premises, Landlord shall be given notice of the intended assignee or subtenant and Landlord shall be given one option within thirty (30) days after the date of such notice to the Landlord to cancel and terminate this lease.

Additional
Rental
(continued)

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 ninety (90) 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~~ option, this lease shall cancel and terminate on the last day of the month next following the end of said ninety (90) 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 paragraph of this article shall be of no further force and effect.

Real
Estate
Taxes

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

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

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

The amount, if any, by which the ad valorem real estate taxes and assessments payable hereunder exceed

_____ DOLLARS (\$) _____) during any lease year, shall be hereinafter referred to as an "excess tax payment". All excess tax payments shall be deductible by Tenant from additional rentals, as defined in Article 4, due and payable for such lease year. In the event the excess tax payment for any lease year exceeds said additional rental due and payable during the same lease year, the amount by which said excess tax payment exceeds said additional rental shall be carried forward and be deductible from additional rentals due and payable for succeeding lease years on a cumulative basis.

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

In the event Tenant constructs, as provided in Article 16 hereof, additional buildings or structures on any portion of the land described in Exhibit "A", said additional buildings or structures shall be excluded from the taxable premises. Said additional buildings or other structures shall be separately assessed and all ad valorem taxes and assessments levied thereon shall be paid and discharged by Tenant and shall not be deductible from additional rentals as provided herein.

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

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

Real Estate
Taxes
(continued)

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

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

New
Building by
Landlord

6. Tenant's said building and site improvements shall be completed and delivered to Tenant promptly and with due diligence. If the performance by Landlord of any of its obligations hereunder is delayed by reason of the act or neglect of Tenant, act of God, strike, labor dispute, boycott, governmental restrictions, riot, insurrection, war, catastrophe, or act of the public enemy, the period for the commencement or completion thereof shall be extended for a period equal to such delay. Landlord warrants that a general contract for construction of said building and improvements referred to in Articles 1 and 12 hereof shall be let, rough site grading shall be completed and foundations and footings commenced not later than November 1, 1979. If for any reason whatever Landlord shall fail to comply fully with this warranty, Landlord shall so notify Tenant in writing and in such event, Tenant shall have, in addition to other remedies which may be available to it by law or otherwise, the option to terminate this lease within sixty (60) days thereafter by notice to Landlord; provided, further, in the event that, regardless of the reason therefor, said building 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 November 30, 1979, then Tenant shall, at any time thereafter, have the further option of terminating this lease by notice to Landlord. Notwithstanding anything to the contrary herein contained, in the event that the lease term shall not have commenced prior to such date as shall be seven (7) years from the date of this lease, then this lease shall be automatically terminated without further act of either party hereto. a sixty (60) day

Drawings
and
Specifi-
cations

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. B-0790, containing such changes, additions and modifications as are more particularly set forth in that certain letter dated April 2, 1979 written by Mr. James A. Kilgore, A.I.A., Manager, Design Division of Tenant's Construction Department, K-Mart corporation, to Pike Avenue Development Company, 2614 Pike Avenue, Little Rock, Arkansas, Attention: Mr. J. D. Ashley, a copy of which is attached hereto and made a part hereof, as Exhibit "C".

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

- (a) Such modifications of arrangement of space, location of entrances, exits, and columns and other structural members as shall be indicated on a store layout drawing 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.

Drawings
and
Specifi-
cations
(continued)

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

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

Guarantee
of
Materials

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

Advance
Possession
for
Fixturing

9. For a period of ~~sixty (60)~~ sixty (60) days prior to completion of Tenant's building by Landlord, as set forth in Article 11(b), Tenant shall have the privilege, rent free, of entering said building for the purposes of installing storage bins, storing merchandise, and other of Tenant's construction activities in conjunction with Landlord's preparation for Tenant's acceptance of said building, which shall not create unreasonable interference with the work of the Landlord. Such entry shall not be construed as an acceptance of the demised premises by the Tenant under the provisions of this lease or as a waiver of any of the provisions hereof.

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").

as
depicted on
the Exhibit "B",

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 adequate sidewalks, driveways, roadways and entrances for automotive and pedestrian ingress and egress to and from the demised premises and adjacent public streets and highways, as shown on said working drawings and specifications.

and any extensions thereof

Landlord further covenants that the aggregate area provided for the parking of automobiles shall during the lease term be sufficient to accommodate not less than Nine Hundred (900) automobiles on basis of arrangement depicted on Tenant's working drawings and specifications. The design, layout, and stripping of the parking area shall not be changed thereafter without Tenant's written consent.

At least sixty (60) days prior to the commencement of the lease term, Landlord shall provide paved driveways running from the adjoining public streets around the front, sides and rear of Tenant's buildings in order to secure convenient ingress and egress from said public streets to the front and rear entrances of Tenant's building for the purpose of receiving and delivering fixtures, merchandise and other property. Such driveways shall be of sufficient width to permit the passage, unloading, and if necessary, the turning around of trailer trucks and other commercial vehicles.

During the lease term, Landlord shall keep Tenant insured against all statutory and common law liabilities for damages on account of damage to property or injuries and loss of life sustained by any person or persons within said common areas, in a policy or policies in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) with respect to injury to any one person and in the amount of One Million Dollars (\$1,000,000.00) with respect to any one accident or disaster, and in the amount of One Hundred Thousand Dollars (\$100,000.00) with respect to damage to property; and Landlord shall also indemnify and save Tenant harmless against any such liability. Any such policies shall bear endorsements to the effect that Tenant shall be notified not less than five (5) days in advance of any modification or cancellation thereof. Copies of such policies, so endorsed, or certificates evidencing the existence thereof, shall be promptly delivered to Tenant upon written request therefor.

Landlord covenants that for the duration of the lease term and any extensions thereof, it will maintain and keep open the service drive around Tenant's building as same is depicted on Exhibit "B".

Parking
and Other
Common
Areas
(continued)

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 whatever action as shall be so requested to prevent said unauthorized utilization, including the erection of fences or other barricades.

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

and (iii) all requirements of Article 2A shall be fulfilled;

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 (60) days (plus a period of time equal to any delays due to conditions beyond Tenant's control) after the date upon which (i) Tenant's building and site improvements shall be completed in accordance with said working drawings and specifications and the possession thereof shall be tendered to Tenant, (ii) all of the representations and warranties set forth in Article 12 shall be fulfilled; except, however, notwithstanding anything to the contrary in this lease contained, in the event said date of occupancy shall occur during the period between November 1 and the last day of February, the lease term shall not commence until March 1 unless Tenant shall elect to open for business prior to such date. Tenant shall have the option to open for business prior to the completion of the matters set forth in subdivisions (i) (ii) of this Article 11, and in the event of the exercise of such option, Landlord shall complete said building and site improvements as expeditiously as possible; provided, however, if Landlord shall have failed to complete said building and improvements according to the said working drawings and specifications within ninety (90) days after Tenant opens for business, Tenant shall thereafter at any time be privileged, but not obligated, to complete, correct, or remedy in all or part any such deficiency, and the cost thereof shall be deducted from the rentals due under this lease, without waiver of Tenant's other remedies hereunder.

and (iii)

Tenant's

Landlord's
Representations
and
Warranties

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

and during
the lease term
and any
extension
hereof

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 for Tenant's intended use, and that all necessary governmental consents, permits and approvals for such use shall have been obtained. Further, Landlord shall deliver to Tenant a Certificate of Occupancy prior to commencement of the lease term.

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

In the event Landlord's said representations and warranties shall not be fulfilled within ninety (90) days after commencement of the lease term, Tenant thereafter shall have the option of either completing said representations and warranties at Landlord's cost and expense, or, alternatively, Tenant shall have an option to terminate this lease by notice to Landlord, which notice shall state an effective date of termination of not less than sixty (60) days from the date of such notice.

Options
to Extend
Lease

13. (a) Tenant shall have ten (10) successive options to extend the term of this lease for an additional period of five (5) years on each such option, such extended term to begin respectively upon the expiration of the term of this lease or of this lease as extended and the same terms and conditions as herein set forth shall apply to each such extended term. If Tenant shall elect to exercise the aforesaid options, it shall do so by giving notice to Landlord not less than six (6) months prior to the expiration of the term of this lease or of this lease as extended.

Options
to Extend
Lease
(continued)

(b) Regardless of the exercise or nonexercise by Tenant of any or all of the foregoing options, Tenant shall have, unless the last day of the lease term shall be January 31 of any year, the option to extend (or further extend, as the case may be) the term of this lease for such period of time as shall cause the last day of the term of this lease to be the January 31 next succeeding the date upon which the term of this lease would expire but for the exercise of this option. This option shall be exercised by notice to Landlord not less than six (6) months prior to the expiration of the term of this lease or any extension thereof. Tenant's rental during this option period shall be the same rental payable under the terms of this lease at the time Tenant notifies Landlord of its intention to exercise this option.

First
Refusal to
Purchase
Option

This lease contains no article 14.
~~14. Anything in this lease contained to the contrary notwithstanding, and without in any manner affecting or limiting any of the rights, privileges, options or estates granted to Tenant under this lease, it is agreed that if the Landlord at any time during the term of this lease (excepting the first lease year) receives one or more bona fide offers from third parties to purchase the demised premises or property of which the demised premises are a part, and if any such offer is acceptable to the Landlord, then Landlord agrees to notify Tenant in writing, giving the name and address of the offeror, and the price, terms and conditions of such offer, and Tenant shall have thirty (30) days from and after the receipt of such notice from Landlord in which to elect to purchase the property for the consideration contained in the bona fide offer. If Tenant does not elect to purchase said property and Landlord thereafter sells the property, the purchaser shall take the property, subject to and burdened with all the terms, provisions and conditions of this lease, including this Article 14 and the rights of the Tenant under this lease as against the new owner shall not be lessened or diminished by reason of the change of ownership. Tenant's failure at any time to exercise its option under this Article 14 shall not affect this lease or the continuance of Tenant's rights and options under this Article 14 or any other article.~~

In the event Tenant elects to purchase the property as provided in this lease, then Landlord shall, within thirty (30) days after receipt of such notice of election by Tenant, deliver to Tenant a title insurance policy in the amount of the consideration set forth in such offer, issued by a responsible title guarantee company, showing a good and marketable title in Landlord. If Landlord fails or refuses to furnish the title policy, then Tenant may, at its election, procure the same at Landlord's expense, and in the amount of the purchase price, and deduct the cost thereof from the cash consideration to be paid for the property. Tenant shall have thirty (30) days after receipt of the title policy in which to examine the title and notify the Landlord whether or not the title is acceptable to Tenant. If Tenant is willing to accept Landlord's title and consummate the purchase, then Landlord shall, within ten (10) days after written notice thereof from Tenant, convey the premises to Tenant by full warranty deed, free and clear of all liens and encumbrances except highway easements, private road easements and restrictions of record which were of record as of the date of Tenant's acceptance of the premises hereunder or incorporated in an amendment to this lease, if any, and deliver such deed to Tenant upon tender of the consideration.

Notwithstanding any other provisions of this lease, the provisions of this Article 14 will not apply to any sale of the demised premises or any property of which the demised premises are a part at foreclosure, and shall not be binding upon any purchaser at foreclosure, any mortgagee in possession, or any holder of a deed in lieu of foreclosure or the successors or assigns of any of the foregoing, or to any sale of the demised premises by Landlord in connection with sale and leaseback financing.

If Tenant is not willing to accept Landlord's title, Tenant shall make any objections thereto in writing to Landlord and Landlord shall be allowed one hundred twenty (120) days to utilize its best efforts to make such title acceptable to Tenant. If such title is not rendered marketable within one hundred twenty (120) days from the date of said written objections thereto, Tenant may, at its election, take such action, including instigation of legal process (in which the Landlord agrees to participate) to remedy any such defect in title making such acceptable to Tenant, and to deduct all costs thereof from the cash consideration to be paid for the property. If the Tenant is unable to correct such defects in title or elects not to attempt such remedy, neither party shall be held liable for damages to the other party, and both parties shall be released of all liabilities and obligations under this Article 14.

Repairs
and
Main-
tenance

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 tenable 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 building which shall be necessary to maintain the building in a safe, dry and tenable condition and in good order and repair; and
- (b) all repairs, maintenance or replacement of or to the demised premises, including but not limited to, underground utility installations and underground electrical conduit and wire, which are occasioned by settlement of the premises or a portion thereof, or caused by soil conditions; and

Repairs
and Main-
tenance
(continued)

(c) all repairs and replacement ~~(excluding repairs, painting and cleaning)~~ necessary to maintain all driveways, sidewalks, street and parking areas free of all settling, clear of standing water, and in a safe, sightly and serviceable condition, free of chuck holes, fissures and cracks.

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

Alterations
and
Additional
Construc-
tion

~~SEE RIDER~~
16. Tenant may, at its own expense, from time to time make such alterations, additions or changes, structural or otherwise, in and to its building as it may deem necessary or suitable; provided, however, Tenant shall obtain Landlord's prior written consent to drawings and specifications for structural alterations, additions or changes; provided, further, Landlord shall not withhold its consent thereto if the structural integrity of the building will not be impaired by such work. The term "structural changes", as used herein, shall not include moving of non-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.

Tenant may, at its own expense, at any time, erect or construct additional buildings or structures on any portion of the demised premises. In such event gross sales made in or from said additions shall be excluded from gross sales as defined in Article 4 of this lease and provided further, said additional building or structure shall be excluded from the taxable premises and all ad valorem taxes and assessments levied thereon shall not be deductible from additional rents payable under the terms of Article 4 hereof. Tenant shall reimburse Landlord for any increase in insurance premiums attributable solely thereto. Tenant shall also be solely responsible for exterior and interior repairs thereto, except 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 properly serviced with gas, electric, telephone, water, sewer and other utilities sufficient to meet Tenant's requirements as of the commencement of the lease term. Tenant shall pay all charges for utility services furnished to the demised premises during the lease term. ~~and deposits~~

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.

Govern-
mental
Regula-
tions

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

Exculpa-
tion

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

Damage to
Demised
Premises

~~SEE RIDER~~
20. From and after the date on which Tenant shall be privileged to enter upon the demised premises for the purposes specified in Article 9 hereof, Landlord shall insure the buildings depicted on Exhibit "B", including Tenant's buildings, against damage or destruction by fire and other casualties insurable under a standard extended coverage endorsement. Said insurance shall be in an amount equal to not less than eighty percent (80%) of the insurable value of the permanent improvements thereof. All such policies shall bear endorsements to the effect that Tenant shall be notified not less than five (5) days in advance of modification or cancellation thereof and that the assured has waived right of recovery from Tenant. Copies of such insurance policies or certificates evidencing the existence thereof shall

Damage to
Demised
Premises
(continued)

~~endorsed, shall be promptly delivered to Tenant upon written request therefor. Irrespective of the cause thereof, Tenant shall not at any time be liable for any loss or damage to said buildings resulting from fire, explosion or any other casualty.~~

~~In the event that, at any time during the lease term, the permanent improvements then constituting Tenant's buildings and site improvements shall be damaged or destroyed (partially or totally) by fire or any other casualty insurable under a standard fire and extended coverage endorsement Landlord shall, at its expense, promptly and with due diligence repair, rebuild and restore the same as nearly as practicable to the condition existing just prior to such damage or destruction; provided, however, if as a result of any such damage or destruction during the last two (2) years of the lease term, Tenant's fixtures, equipment or other property shall be damaged or destroyed in an amount exceeding Twenty-five Thousand Dollars (\$25,000 00), then either party may terminate this lease as of the date of such damage or destruction by giving written notice to the other party within thirty (30) days thereafter and Tenant shall have an additional sixty (60) days, rent free, within which to remove its property from the demised premises. Notwithstanding any such termination of this lease by Landlord as provided in this Article, Tenant shall have the right to exercise any option to extend the term hereof in accordance with the provisions of Article 13 within thirty (30) days after the date of the receipt of Landlord's notice of termination, and upon the exercise of any such option (other than the option set forth in paragraph (b) of Article 13) by Tenant, then this lease shall continue in full force and effect despite such notice of termination by Landlord and Landlord shall repair, rebuild and restore the said permanent improvements as above provided. 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 (plus a period of time equal to any delays due to conditions beyond Tenant's control) after the date of completion of the repair, rebuilding and restoration required of Landlord herein.~~

~~In the event that, at any time during the lease term except the last two (2) years thereof, any building or buildings within the site depicted on Exhibit "B", other than Tenant's building or buildings, shall be damaged or destroyed (partially or totally) by fire, the elements or any other casualty, Landlord shall, at its expense, promptly and with due diligence repair, rebuild and restore the same as nearly as practicable to the condition existing just prior to such damage or destruction; or Landlord may, at its option, elect to raze any buildings so damaged or destroyed and pave the area formerly occupied by said buildings so as to provide additional parking facilities, said areas to be paved, marked, lighted, drained and maintained in the same manner as required in Articles 10 and 15 hereof for other parking areas in the demised premises.~~

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

Eminent
Domain

21. In the event all of Tenant's building 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, this lease shall terminate as of the date Tenant shall be deprived thereof. The expected widening of Hwy. 82 as depicted on Exhibit "B" shall not be construed as a material impairment as set forth above so long as it does not affect ingress or egress as depicted on Exhibit "B".

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.

Eminent Domain
(continued)

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

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

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

Tenant shall not be entitled to share in any award made by reason of expropriation of Landlord buildings on the demised premises, or any part thereof, by public or quasi-public authority, except as set forth in the preceding paragraph relative to unamortized expenditures by Tenant and then only if the award for such unamortized expenditures shall be made by the expropriating authority in addition to the award for the land, buildings and other improvements (or portions thereof) comprising the demised premises; however, the Tenant's right to receive compensation for damages or to share in any award shall not be affected in any manner hereby if said compensation, damages, or award is made by reason of the expropriation of the land or buildings or improvements constructed or made by Tenant subject to the restrictions and qualifications contained in Rider 38, Shopping Center Standards. The premises hereby demised may be used for any lawful purpose. Tenant may assign this lease or sublet the whole or any part of the demised premises, but if it does so, it shall remain liable and responsible under this lease, including all rental payments due hereunder.

Use,
Assignment,
and
Subletting

Signs

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

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. Tenant shall have the option to utilize the lighting standards in the parking lot for advertising purposes by attaching, or causing to be attached, signs advertising any and all products and services as Tenant shall elect. Such signs must comply with any and all Shopping Center requirements and must first be approved by Landlord.

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

Ingress
and
Egress

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

Landlord's
Remedies

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

Bankruptcy

26. If a petition in bankruptcy shall be filed by Tenant, or if Tenant shall be adjudicated bankrupt, or if Tenant shall make a general assignment for the benefit of creditors, or if in any proceeding based upon the insolvency of Tenant a receiver of all of the property of Tenant shall be appointed and shall not be discharged within ninety (90) days after such appointment, then Landlord may terminate this lease by giving notice to Tenant of its intention 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 or has a good and marketable leasehold title to the land described in 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.
- (b) Declaration of Restrictions and Easements referred to in Article 1 hereof.
- (c) Leasehold mortgage for improvement financing.

Landlord shall, without expense to Tenant and within thirty (30) days after written request by Tenant, furnish (a) a certification by an attorney acceptable to Tenant that Landlord's title is as herein represented and certifying that the premises depicted on Exhibit "B" are within the bounds of the property described in Exhibit "A", (b) a survey by a licensed surveyor of the land described in 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.

However, Tenant shall vacate the demised premises on notice by Landlord, which notice shall state an effective date of not less than sixty (60) days from the date of such notice and upon vacating by Tenant this lease shall become null and void.

Covenant
of Title
(continued)

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

Mortgage
Subor-
dination

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

Tenant
Indemnifies
Landlord

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

Tenant's
Right to
Cure
Landlord's
Default

30. 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 seven (7) days after notice thereof by Tenant, 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 and make all necessary payments in connection therewith, and Landlord shall on demand, pay Tenant forthwith the amount so paid by Tenant together with interest thereon at the rate of seven percent (7%) per annum or the then current prime rate, whichever is the higher, and Tenant may to the extent necessary withhold any and all rental payments and other payments thereafter due to Landlord and apply the same to the payment of such indebtedness

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

Condition
of Premises
at Termi-
nation

31. At the expiration or earlier termination of the lease term Tenant shall surrender the demised premises, together with alterations, additions and improvements then a part thereof, in good order and condition except for the following: 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), which option shall be exercised by notice of such relinquishment to Landlord, and from and after the exercise of said option the property specified in said notice shall be the property of Landlord

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.

Investment
Tax Credit

33. Landlord hereby agrees to elect under the applicable provisions of the Internal Revenue Code of 1954, as amended, (hereinafter referred to as the "Code") to pass through to the Tenant all investment tax credit which may be available from time to time in respect of the demised premises under Section 38 of said Code to the extent such investment tax credit is not usable under said Code by the Landlord, its successors and assigns. Landlord agrees to timely execute all documents required by said Code, and regulations issued thereunder, to enable Tenant to obtain such investment tax credit

Investment
Tax Credit
(continued)

Landlord further agrees to maintain adequate records so that the qualifying property can be identified and the cost thereof can be determined and to provide such records to the Tenant upon written request and otherwise to cooperate with Tenant in said matter. Landlord agrees not to destroy or otherwise dispose of such records until written consent to such destruction or disposal has been obtained from Tenant.

Notices

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

Captions
and
Definitions

35 Marginal captions of this lease are solely for convenience of reference and shall not in any way limit or amplify the terms and provision 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 defaults occurring prior to such termination.

Successors
and
Assigns

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

Memorandum of
Lease

37 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.

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

WITNESSES:

Thomas N. Bayton

Suzanne S. Gordon

J. D. Ashley and Larry C. Wallace
d/b/a, University Plaza Shopping
Center, a Partnership

By: J. D. Ashley
J. D. Ashley, Partner ~~President~~

and
Attest: Larry C. Wallace
Larry C. Wallace, Partner ~~Secretary~~

KMART CORPORATION

Debra A. Griffith
Shelly J. Kudzik

By: J. P. Johnson
J. P. Johnson, Vice President

Attest: C. E. Lotzar, Jr.
C. E. Lotzar, Jr., Assistant Secretary

THIS RIDER CONSISTING OF TWELVE PAGES IS ATTACHED TO AND FORMS A PART OF THAT CERTAIN LEASE DATED THIS 28th DAY OF August , 1979, BETWEEN J. D. ASHLEY AND LARRY C. WALLACE, d/b/a UNIVERSITY PLAZA SHOPPING CENTER, AS LANDLORD, AND K MART CORPORATION, AS TENANT

demised
premises

1. Landlord does demise unto Tenant and Tenant does take from Landlord for the term hereinafter provided, and any extension thereof, the following property: Tenant's completed building (designated K Mart) as well as the directly underlying land; said completed building and site improvements to be constructed as hereinafter specified by Landlord at its expense on land comprising approximately 16.19 acres described in Exhibit "A" attached hereto and made a part hereof, constituting a shopping center to be situated in the City of Magnolia, County of Columbia, State of Arkansas, said building to be in the location depicted on Exhibit "B" attached hereto and made a part hereof, and of the following dimensions:

K mart Store	248' x 224'	=	55,552 sq. ft.
8 Bay Drive-Thru TBA			5,290 sq. ft.
Total			<u>60,842 sq. ft.</u>

Plus: Outdoor Garden Shop 56'3" x 99'1"

TOGETHER with the full licenses, rights, privileges and easements hereby given and granted by Landlord unto Tenant, including Tenant's agents, employees, customers, licensees and invitees to use the common areas including the sidewalks, service drives, parking aisles, driveways, streets and parking areas, in common with Landlord and the other tenants of the land described in Exhibit "A" and their respective agents, employees, customers, licensees and invitees. Said complete building as well as the directly underlying land, together with the licenses, rights, privileges and easements appurtenant thereto set forth above and in Article 11 hereof, shall be hereinafter collectively referred to as the "demised premises."

SUBJECT to and together with the benefits of a certain Declaration of Restrictions and Easements attached hereto as Exhibit "D" and consented to by Tenant and which shall be executed and recorded by Landlord prior to the recording of the Memorandum of Lease executed between Landlord and Tenant simultaneously herewith.

J. D. Ashley
L. C. Wallace

Term
(cont'd).

2.A. Notwithstanding the provisions of this Article 2, Tenant may delay opening for business and the commencement date of the term of this lease until Landlord has satisfied the following conditions:

- i. The Kroger store is open for business, and,
- ii. Tenants occupying 50% of the remaining gross leaseable area in the shopping center are open for business.

Real
Estate
Taxes

5. Landlord shall pay and discharge all real estate taxes, assessments and other charges levied and assessed against the land described in Exhibit "A", together with all buildings and improvements now or hereafter erected thereon, as they become due and payable, together with all interest and penalties thereon, under or by virtue of all present or future applicable laws or rules.

Tenant, however, throughout the lease term and any extensions thereof shall and hereby agrees to pay to Landlord all ad valorem real estate taxes and assessments which shall be levied or assessed by lawful governmental taxing authorities against the taxable premises, as that term is defined below, during the lease term, excluding therefrom payment of assessments which are incurred or levied as a result of Landlord's activity in developing the demised premises for Tenant's occupancy.

The term "taxable premises", as used in this lease shall be:

- (a) The K mart building required to be constructed by Landlord under the terms of this lease and the directly underlying land; and
- (b) Tenant's proportionate share of the lands described in Exhibit "A". Said proportionate share shall be determined in accordance with the ratio that the square foot area of Tenant's building excluding Tenant's Outdoor Garden Shop bears to the total square foot area of all leaseable building space erected on the land described in Exhibit "A".

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 in the years in which this lease commences and terminates shall be prorated proportionately.

during the lease term.
Any such installments
due and payable

JWA
(ccw)

ad
valorem
real estate
taxes
(cont'd).

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

The amount, if any, by which the ad valorem real estate taxes and assessments payable as hereinabove provided exceed fifteen thousand dollars (\$15,000) for the taxable premises during any lease year, shall be hereinafter referred to as "excess tax payment." All excess tax payments shall be deductible by Tenant from additional rentals, as defined in Article 4, due and payable for such lease year.

The taxable premises as herein defined, or the components thereof, shall, if possible, be separately assessed from any contiguous land and other Landlord improvements and from any additional lands and improvements incorporated into the demised premises in the future. If Landlord is unable to obtain such separate assessment, then for purposes of this article, the parties shall refer to the office records of the assessing authority to obtain the relevant valuations in order to calculate Tenant's liability for the taxes hereunder.

If the Landlord is unable to obtain such separate assessment, and if the parties shall be unable to obtain relevant information from the office records of the assessing authority from which to obtain such relevant valuations of the taxable premises as hereinabove provided, then Tenant shall pay that portion of the taxes due on the land described in Exhibit "A" and the buildings and improvements erected thereon, which shall be equal to the product of the total tax liability therefor multiplied by a fraction, the numerator of which shall be the number of square feet of Tenant's building, excluding Tenant's Outdoor Garden Shop, and the denominator of which shall be the total number of square feet of all buildings, including Tenant's building constructed on said land, but excluding Tenant's Outdoor Garden Shop.

Landlord shall submit to Tenant a bill for Tenant's tax proration together with true copies of the tax bill and a statement of the facts and information needed to calculate the Tenant's tax proration as soon as practicable after the tax bills are received, and Tenant shall pay the Tenant's tax proration within thirty (30) days after receipt of said

bill and statement. Any charges for a real estate tax or assessment, a part of which is included in a period of time before the commencement date or after the termination date shall be equitably adjusted between Landlord and Tenant as of the commencement date or termination date, as the case may be.

Tenant shall have the right to participate in all negotiations of tax assessments. Tenant shall have the right to contest the validity of the amount of any tax or assessment levied against the taxable premises by such appellate or other proceedings as may be appropriate in the jurisdiction, may pay the 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 any other proceeding causing Landlord to be in default or similar action against the demised premises. Landlord shall cooperate in the institution and prosecution of any such proceedings initiated by Tenant and will execute any documents required therefor. In the event Tenant shall pay its pro rata share of the ad valorem real estate taxes under protest, Landlord covenants and agrees that in remitting the same to the appropriate taxing authority it will likewise remit the same under protest if not paid directly to the taxing authority by Tenant.

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

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 applicable to the taxable premises 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. In the event Tenant elects to contest real estate taxes, Landlord shall not be responsible for reimbursing Tenant for the cost of contesting such taxes.

Real
Estate
Taxes
(cont'd).

If Landlord shall obtain a remission or a refund of all or any part of the real estate taxes for any fiscal real estate tax year attributable to the taxable premises, Landlord shall promptly refund to Tenant its proportionate share of the remission or refund.

Tenant shall not be chargeable with, nor be obligated to pay any portion of any income, profit, inheritance, estate, succession, gift, franchise or transfer tax which are or may be imposed upon the Landlord or the real property described in Exhibit "A" by whatsoever authority or howsoever designated.

Landlord's
Representations and
Warranties
(cont'd).

12. Landlord further represents, warrants and covenants that in addition to the construction of Tenant's building provided for in Article 6 hereof, simultaneously with such construction, Landlord will erect the Landlord's buildings as depicted on Exhibit "B". Landlord further represents, warrants and covenants that it shall construct said Landlord's buildings substantially in the size and location as they are depicted on Exhibit "B".

Landlord further represents, warrants and covenants that said Landlord's buildings will be compatible with and integrated with Tenant's building\$.

Repairs
and
Maintenance
(cont'd).

15. It shall be Landlord's further responsibility to keep and maintain the common area in good condition and repair, including but not limited to keeping said common area properly cleaned, drained, reasonably free and clear of snow, ice, water, rubbish and other obstructions, and in a neat, clean, orderly and sanitary condition; maintaining of signs, markers, painted lines and other means and methods of pedestrian and vehicular traffic control; maintaining adequate roadways, entrances, and exits; and maintaining any plantings and landscaped areas. Landlord shall keep said common area suitably lighted during, and for appropriate periods before and after Tenant's business hours.

Tenant agrees to pay to Landlord, Tenant's pro rata share of the cost of maintaining the common area (such share to be hereinafter referred to as "Common Area charge"). Tenant's "common area charge" shall mean for any period, the product of (a) the actual cost and expense for the maintenance and operation of the common area (hereinafter called

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Repairs
Maintenance
(cont'd).

"common area costs") for such period and (b) a fraction, the numerator of which shall be the number of square feet of ground floor area of Tenant's building, excluding Tenant's Outdoor Garden Shop, and the denominator of which shall be the total number of square feet of ground floor area of all leaseable building space located in the Shopping Center (including Tenant's building but excluding Tenant's Outdoor Garden Shop). The Common Area costs shall be limited to amounts paid by Landlord in the maintenance of the Common Area for the items Landlord is required to furnish, to wit: (1) keeping said Common Area properly cleaned, swept, drained, reasonably free of snow, ice, water, rubbish and other obstructions; (2) maintaining traffic signs, markers, painted lines and other means and methods of pedestrian and vehicular traffic control; (3) maintaining any plantings and landscaped areas; (4) lighting costs, including maintaining, repairing and replacing all bulbs with respect to the common area lighting; and (5) wages and salaries of persons directly and actually performing the services hereinabove set forth. The cost of maintaining the common area shall not include real estate taxes, capital expenses, office overhead, license or permit fees, or rubbish removal for other tenants.

Commencing as of the commencement date, Tenant shall pay to Landlord for operation of said common area, for such monthly period, Tenant's common area charge for such period. If the commencement of the foregoing is a day other than the first day of a month, or if the term of this lease ends on a day other than the end of a month, Tenant shall pay for each of the two periods less than a monthly period at the beginning and at the end of the term of this lease, the Tenant's common area charge for such period as the same bears proportionately to the fraction, the numerator of which shall be the number of days in such period, and the denominator of which shall be 30.

As soon as is practicable after the end of each monthly period, Landlord shall submit to Tenant a bill for the amount required to be paid by Tenant under this Article, setting forth in reasonable detail the items and amounts included in, and setting forth the method of calculating, the Tenant's common area charge. Unless disputed, Tenant shall pay said amount to Landlord as additional rent within thirty (30)

for
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Repairs
and
Maintenance
(cont'd).

days after receipt thereof. Landlord shall keep, for a period of one (1) year following the end of each quarterly period, complete and accurate books and records in respect of the Common Area costs for such period and Tenant upon two (2) days' notice shall have the right to have such books and records audited by a certified public accountant, and in the event that such audit discloses that Tenant paid an amount in excess of the proper Tenant's Common Area charge, Landlord shall refund the excess to Tenant promptly upon demand and shall pay to Tenant promptly upon demand the reasonable cost of such audit.

In the event that in Tenant's reasonable judgment the Landlord fails to properly perform the above maintenance on the common areas to the satisfaction of Tenant, Tenant shall have the right, at any time, on thirty (30) days notice to Landlord (in which period of time Landlord shall have the opportunity to cure), (1) to discontinue its payments pursuant to this Article 15 until such time as Landlord has resumed adequate maintenance operations in the common areas and restores subject area to a satisfactory condition; or (ii) to perform in conjunction with the other tenants of the shopping center Landlord's maintenance obligations on the affected portion of the common areas and deduct from the respective payments due herein the amount expended by Tenant in the performance of Landlord's maintenance obligations.

Neither Landlord or any occupant of the shopping center may exact any charge or permit others to exact any charge for use of the common area of the shopping center from customers, invitees, licensees, subtenants or employees of any tenant in the shopping center.

Damage to
Demised
Premises

20. A. From and after the date on which Tenant shall be privileged to enter upon the demised premises for the purposes specified in Article 10 hereof, Landlord shall insure or cause to be insured the Landlord's buildings depicted on Exhibit "B", other than Tenant's building, against damage or destruction by fire or other casualties insurable under a standard extended coverage endorsement, in an amount equal to not less than eighty per cent (80%) of the insurable value of the permanent improvements thereof (exclusive of foundation, foundation walls and

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Damage to
Demised
Premises
(cont'd).

excavation costs and costs of underground flues, pipes and drains). All such policies shall be carried by Landlord in solvent and responsible companies licensed to do business in the state where the Shopping Center is located and bear endorsements to the effect that Tenant shall be notified not less than ten (10) days in advance of modifications or cancellation thereof and that the assured has waived right of recovery from Tenant. Copies of all such insurance policies or certificates evidencing the existence thereof so endorsed shall be promptly delivered to Tenant with replacement policies or certificates as aforesaid, at least ten (10) days prior to the expiration of the then current policy. Irrespective of the cause thereof, Tenant shall not at any time be liable for any loss or damage to the improvements, including Landlord's buildings and structures within the site depicted on Exhibit "B" resulting from fire, explosion or other casualty and Tenant shall not be liable for any loss or damage to the property of Landlord resulting from any such causes, including the negligence of Tenant, or its respective agents, employees, servants or invitees.

In the event that at any time during the lease term the permanent improvements constituting the Landlord's buildings within the site depicted on Exhibit "B", other than Tenant's building, shall be damaged or destroyed (partially or totally) by fire, the elements or any other casualty, Landlord shall, at its expense, without unnecessary delay, repair, rebuild and restore the same as nearly as practicable to the condition existing just prior to such damage or destruction, but only to the extent it is obligated to do so under any lease for same and if not so obligated, then shall cause the occupant of the damaged or destroyed building to accomplish the same.

20. B. From and after the "date of occupancy by Tenant", as that term is defined in Article 11 hereof, should Tenant's net worth at any time be less than One Hundred Million Dollars (\$100,000,000.00), upon written request of the Landlord or mortgagee, Tenant shall procure insurance with extended coverage endorsement covering loss by fire, the elements and other casualty upon the building erected by Landlord pursuant to Article 6 hereof in an amount equal to eighty per cent (80%) of the insurable value of the building above the foundation walls. At any time

Damage to
demised
Premises
(cont'd).

while Tenant's net worth shall exceed One Hundred Million Dollars (\$100,000,000.00), the Tenant may elect to self-insure its obligation to restore.

Policies of insurance procured pursuant to this article shall assure and be payable to Landlord, Tenant and mortgagee and shall provide for release of insurance proceeds to Tenant for restoration of loss.

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

In the event that, at any time during the lease term, the permanent improvements then constituting Tenant's building shall be damaged or destroyed (partially or totally) by fire, the elements or any other casualty insurable under a standard fire and extended coverage endorsement Tenant shall, at its expense, promptly and with due diligence either (1) repair, rebuild and restore the same as nearly as practicable to the condition existing just prior to such damage or destruction or (2) repair, rebuild and restore the same for the same use and purposes but in accordance with such plans and specifications as are then generally in use by Tenant for the construction of K marts and related structures, provided, however, the repaired, rebuilt or replaced building will have a value not less than its value just prior to said loss. Anything herein to the contrary notwithstanding, it is understood and agreed that if (1) as a result of any such damage or destruction during the last two years of the lease term, Tenant's fixtures, equipment or other property shall be damaged or destroyed in an amount exceeding One Hundred Thousand Dollars (\$100,000.00), or (2) if such damage or destruction shall have taken place within five years of the then scheduled expiration date of the current term of the lease and if the extent of such damage or destruction is such that the cost of restoration would exceed fifty per cent (50%) of the amount it would have cost to replace the Tenant's building on the demised land in their 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

Damages to
Demised
Premises
(cont'd).

(60) days, rent free, within which to remove its property from the demised premises. If Tenant is carrying insurance as provided in this article to eighty per cent (80%) of the insurable value, all the insurance proceeds shall belong to Landlord and/or Landlord's mortgagee as their interest may appear; in the event the property is self-insured at the time of the loss Tenant shall reimburse Landlord and/or the mortgagee for an amount equivalent to the insurance proceeds that would have been paid had insurance been in force, but not to exceed eighty per cent (80%) of the insurable value of the buildings. 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.

Irrespective of the cause thereof, Tenant shall not at any time be liable for any loss or damage to the improvements including the buildings and structures within the site depicted on Exhibit "B", resulting from fire, explosion or any other casualty and Tenant shall not be liable for any loss or damage to the property of Landlord resulting from any such causes, including the negligence of Tenant, or its respective agents, employees, servants or invitees, except as hereinafter set forth. Any insurance carried by Tenant on its building or structures within the Demised Premises or by Landlord on any of its property within the Demised Premises shall waive right of recovery one against the other.

Signs
(cont'd).

23. Landlord shall not, without Tenant's written consent, at any time utilize the exterior of Tenant's building, or the space above, for sign display purposes, nor permit any other advertising signs, billboards or posters to be displayed on any portion of Tenant's building.

Landlord shall not permit exposed neon, flashing or animated signs or billboards or posters, or roof or free-standing signs, to be erected or displayed on any portion of the premises described in Exhibit "A", and any signs hereafter affixed on any building shall be affixed parallel to and shall not project more than 20 inches out from any such building or marquee or facade thereon.

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Signs
(cont'd).

Landlord shall not permit any advertising signs, billboards or posters to be displayed on any portion of the premises described in Exhibit "A", except signs which may be placed on Landlord's buildings, providing such signs shall be utilized solely for the purpose of advertising the name of the tenants thereof.

Shopping
Center
Standards

38. For the purpose of enhancing the overall appeal of the shopping center, Landlord acknowledges that the selection of other tenants shall be consistent with maintaining a balanced and diversified grouping of retail stores. Landlord warrants, covenants and agrees that no Landlord building erected within the lands described in Exhibit "A" shall be leased or permitted to be used or occupied by Landlord or its tenants or any successors or assigns of either Landlord or its tenants or by any subtenant or licensee of a tenant, for an establishment selling or exhibiting pornographic materials, massage parlor, automobile show room, body and fender shop, car wash, office space exceeding 2,000 square feet of ground floor area, off-track betting parlor, discotheque, or for industrial or warehouse purposes. Tenant's premises shall be used for purposes and uses consistent with the restrictions of this paragraph.

For so long as the Landlord shall operate the Shopping Center, Tenant shall not, without the consent of the Landlord: (i) conduct or permit any fire, bankruptcy, or auction sale (whether real or fictitious) or any fictitious "going out of business" sale within the Leased Premises; (ii) use, or permit to be used, any advertising medium that might constitute a nuisance, such as loudspeakers, sound amplifiers, phonographs or radio or television broadcasts in a manner which can be heard outside the Leased Premises for any unlawful purpose; or (iii) burn any trash or garbage in any area or store any trash or garbage outdoors except in closed containers within Tenant's truck dock area or as elsewhere shown on the Plans; or (iv) park trucks and delivery vehicles so as to unreasonably interfere with the use of the driveways, walks, roadways, highways, streets, or Common Areas; or (v) use the Common Areas for solicitations, demonstrations, or any other activities that would unreasonably interfere with the conduct of the other occupants' business or of any of the

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Shopping
Center
Standards
cont'd).

rights vested in Landlord; or (vi) use, operate or maintain any of the Leased Premises in such a manner that any of the rates for any insurance carried by Landlord or Tenant shall thereby be increased. Nothing contained hereinabove in this Article shall be deemed to prohibit Tenant from exercising any of the rights granted it elsewhere in this Lease Agreement or from conducting promotions from or retail business on the Demised Premises.

Nothing contained in this Lease Agreement shall in any way restrict Tenant's right to conduct its business, if any, on the Leased Premises in the Shopping Center in such manner as Tenant, in its sole discretion, may deem appropriate, including the hours during which Tenant shall be open for business. Nothing contained in this Lease Agreement shall in any way restrict Tenant's right to sublease or license departments or grant concessions giving other persons, firms or corporations the right to sell goods, wares, merchandise and services in the Leased Premises, in each case subject to the provisions of this Lease Agreement. Nothing contained in this Lease Agreement shall be construed as a covenant by Tenant to operate a business in the Leased Premises.

Force
Majeure

39. If the performance by Landlord of any of its obligations hereunder is delayed by reason of the act or negligence of Tenant, act of God, strike, labor dispute, boycott, governmental restrictions, riot, insurrection, war, catastrophe, or act of the public enemy, the period of the commencement or completion thereof shall be extended for a period equal to the period by which performance is delayed.

Handwritten initials
LEW

FIRST ADDENDUM TO LEASE

THIS FIRST ADDENDUM to that certain lease dated August 28, 1979 by and between J.D. ASHLEY and LARRY C. WALLACE d/b/a UNIVERSITY PLAZA SHOPPING CENTER, an Arkansas partnership in said Lease and herein referred to as "Landlord", and K MART CORPORATION, a Michigan corporation, in said Lease and herein referred to as "Tenant";

WITNESSETH

The parties agree that the Lease and Rider are hereby modified and supplemented in the following respects, and wherever a conflict between this Addendum and the Lease or Rider exist, the provisions of this Addendum shall control and the Lease and Rider shall be construed accordingly.

1. Article 10, Parking and Other Common Areas. Landlord further covenants that the aggregate area provided for the parking of automobiles shall during the lease term and any extensions thereof be sufficient to accommodate not less than Seven Hundred Ninety Five (795) automobiles on basis of arrangement depicted on Tenant's working drawings and specifications.
2. Article 16, Alterations and Additional Construction. The following language shall be added to the end of the second paragraph:
"...and further provided, the Tenant, in engaging in any additional construction permitted hereunder, shall at all times abide by and conform to any governmental regulations and/or requirements for automobile parking."
3. Article 21, Eminent Domain. The fourth paragraph shall be modified as follows:
"If Landlord shall be unable to substitute such lands and if one or more expropriations shall in total deprive Tenant of the use of more than fifteen percent (15%) of the land described in Exhibit "A", then, in such event, the Tenant shall have the option to terminate this lease at any time within twelve (12) months after such deprivation becomes effective by giving notice to Landlord".
4. Article 24, Ingress and Egress. The following language shall be added to the paragraph
"In the event facilities for ingress and egress as depicted on Exhibit "B" must be permanently relocated due to act of public authority or other circumstances beyond Landlord's control, Tenant shall not terminate this lease as long as suitable ingress and egress facilities

substantially similar to those depicted on Exhibit "B" are provided."

- 5. Article 22, Use Assignment and Subletting. The following language shall be added to the paragraph: "Tenant shall limit the area of the demised premises devoted to the sale of food and food products to 2,500 square feet (exclusive of any adjacent aisle space) in accordance with the provisions of the Kroger Lease and Lease Modification Agreements. Provided further that Tenant shall not assign the lease or sublet the demised premises to any tenant whose conduct of business would result in the violation of this area restriction so long as Kroger continues to occupy the building and operate same as a food market."
- 6. Rider, Article 20. The following language shall be added to this Article: "The obligations of Tenant, as contained in this Article, shall inure directly to Union Mutual Life Insurance Company as first lienholder and to any successor mortgagee, and shall not be invalidated by any act, neglect or default of Landlord, nor by any foreclosure or other similar proceedings, nor by any change in title or ownership of the demised premises."
- 7. Rider, Article 38. The first paragraph of this Article shall be modified in the following manner: "...office space exceeding 8,500 square feet of ground floor area..."

IN WITNESS WHEREOF, the parties hereto have duly executed this Addendum on this 15th day of December 1980.

WITNESS:

LANDLORD:
J.D. ASHLEY and LARRY C. WALLACE
d/b/a UNIVERSITY PLAZA SHOPPING CENTER

Anita S. Allison

By J.D. Ashley
J.D. Ashley, Partner

Carolyn E. Sparks

By Larry C. Wallace
Larry C. Wallace, Partner

TENANT:
K MART CORPORATION

Lynn Ziesch
 Shelly J. Shuck

By J.P. Johnson
J.P. Johnson, Vice President

By C.E. Lotzar, Jr.
C.E. Lotzar, Jr. Assistant Secretary

SECOND AMENDMENT OF LEASE

THIS SECOND AMENDMENT OF LEASE, made and entered into as of this 19th day of August, 1991, by and between J.D. Ashley and Larry Wallace d/b/a University Plaza Shopping Center, an Arkansas Partnership having its principal office at 2649 Pike Avenue, N. Little Rock, Arkansas 72114, and Kmart Corporation, a Michigan corporation having its principal office at 3100 West Big Beaver Road, Troy, Michigan 48084 (hereinafter referred to as Tenant).

WITNESSETH

WHEREAS, J.D. Ashley and Larry Wallace d/b/a University Plaza Shopping Center (University Plaza), and Tenant entered into a certain Lease dated the 28th day of August, 1979, under the terms of which Landlord leased certain premises to Tenant in the City of Magnolia, County of Columbia, State of Arkansas, known to be Kmart #9681 (as amended by the First Amendment of Lease dated August 28, 1979, herein called the "Lease").

WHEREAS, the parties hereto now desire to amend and modify said lease as more particularly set forth herein;

NOW Therefore, in consideration of the premises and the mutual covenants hereinafter contained, the parties agree to amend their lease as follows:

- 1. Dimensions. That Article 1 of the lease shall be amended to provide for a Kmart store limit of the following dimensions:

<u>248'</u>	in width by		
<u>224'</u>	in depth	<u>55,552</u>	sq. ft.
+ 8-Bay Drive Thru TBA			
<u>approximately 46' x 115'</u>		<u>4,840</u>	sq. ft.
	Total	<u>60,392</u>	sq. ft.

EXPANSION

<u>125'</u>	in width by		
<u>191' 8"</u>	in depth	<u>23,959</u>	sq. ft.
	Total	<u>84,351</u>	sq. ft.

Plus a garden shop area measuring:

66' 3" in width by
155' 10" in depth 10,324 sq. ft.

2. Additional Rental. Article 4 (entitled "Additional Rental") of the Lease is amended by changing the amount \$7,000,000 appearing therein to \$10,500,000. Such new dollar amount shall be effective on, as of, and after the date that Tenant first opens the Building Expansion for business with the public (hereinafter referred to as the "Opening Date"); provided, however, that for purposes of the lease year in which the Opening Date falls, the dollar amount applicable under said Article 4 shall be the sum of the following two amounts: (a) the product between \$7,000,000 and a fraction which has as its numerator the number of days in such lease year that are prior to the Opening Date and as its denominator 365; plus (b) the product between \$10,500,000 and a fraction which has as its numerator the number of days in such lease year that are on or after the Opening Date and as its denominator 365. Notwithstanding anything to the contrary provided in Paragraph 16 of the Lease, sales made from the Addition shall be included in determining "gross sales" for purposes of calculating additional rent due under Article 4 of the Lease.
3. Ad Valorem Taxes. Paragraph 5(b) of the Rider to the Lease is hereby amended by changing the figure of FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00) to TWENTY-EIGHT THOUSAND AND NO/100 DOLLARS (\$28,000.00) on page 3 of said Rider (the "increased ad valorem tax ceiling"), said increased ad valorem tax ceiling to become effective as of the year in which any additional ad valorem taxes or assessments are assessed as a result of the Addition (the Kmart Expansion).
4. Exhibit A. That Exhibit "A" to said Lease shall be deleted and replaced by the attached Exhibit "A-1".
5. Exhibit B. That Exhibit "B" to said Lease shall be deleted and replaced by the attached Exhibit "B-1".
6. Expansion. That the parties agree that Kmart shall construct the expansion (125' x 191' 8") being approximately 23,959 sq. ft. and the garden shop at its own cost. Also, Landlord agrees to provide the underlying land at no additional cost to Tenant.
7. Expense. Tenant shall, at its own cost and expense, maintain and repair the interior and exterior of the Addition without any contribution from Landlord.
8. Construction of the Kmart Expansion. (a) Landlord hereby consents to the expansion of the Existing Building, and Garden Shop in the approximate location and dimensions depicted on Exhibit "B-1" at Tenant's sole cost and expense; the construction of all improvements related to the Kmart Expansion; and Tenant's right to conduct its garden shop sales in the Shopping Center parking lot during the construction of the Kmart Expansion.

(b) All work in connection with the Kmart Expansion shall be performed, as aforesaid, at the sole cost and expense of Tenant, in a good and workmanlike manner, in accordance with all rules, regulations, building codes

and ordinances, of all local, municipal, state and/or federal authorities having jurisdiction thereof. Any and all approvals, licenses and/or permits required in conjunction therewith shall be obtained by Tenant from the authorities having jurisdiction thereof, likewise at the sole cost and expense of Tenant. To the extent required in connection with the foregoing, Landlord agrees, at the request of Tenant, to execute any and all documents and applications and to otherwise cooperate with Tenant in an effort to expedite the grant and issuance of the approvals, licenses, and/or permits required for the work contemplated hereunder.

(c) Tenant shall proceed with due diligence to complete the Kmart Expansion after construction has begun. All construction shall be completed substantially in accordance with the drawings and specifications approved by Landlord.

9. Landlord Approval of Drawings and Specifications. Prior to commencing construction of the Kmart Expansion, Tenant shall submit to Landlord detailed working drawings and specifications of the expansion and related site work for review and approval. Landlord shall review the submitted drawings and not unreasonably withhold its approval. Within thirty (30) days after receipt of such working drawings and specifications, Landlord shall notify Tenant in writing of any objections thereto. Tenant shall address such objections and resubmit such working drawings and specifications to Landlord for further review and approval. Landlord shall then have an additional fifteen (15) days after receipt of Tenant's revised working drawings and specifications to approve or disapprove. If Landlord shall fail to give Tenant written notice of its objections to the submitted working drawings and specifications within the periods provided herein, Landlord's acceptance and approval shall be inferred.
10. Mechanic's or Construction Liens. Tenant shall not permit any mechanic's, construction, or similar liens to be lodged against and/or remain upon the Demised Premises or otherwise upon the Shopping Center for labor or material furnished to or claimed to have been furnished to Tenant in connection with work of any character performed or claimed to have been performed relative to the Kmart Expansion or otherwise with respect to any of the renovations and improvements contemplated hereunder, at the direction or with the consent of Tenant, whether such work was performed or materials furnished before or after the commencement thereof. Tenant may contest the validity of any such liens or claim, provided that such contest does not expose the Landlord to the risk of a sale, foreclosure, or forfeiture of the Demised Premises and/or the Shopping Center by reason of any such non-payment, in which event the Landlord shall have, and does hereby reserve the right to require the Tenant to properly and adequately bond such lien or claim. Tenant shall bond such lien or claim within 30 days after receiving written notice from Landlord requiring Tenant to take such action. Upon a final determination of the validity of such lien or claim, Tenant shall immediately pay any judgment or decree rendered against Tenant or Landlord with all proper costs and charges and shall cause such lien to be fully released without cost to Landlord.

11. Tenant's Damage to the Existing Building. In the event that any of the work performed by Tenant under and pursuant to this Lease Amendment requires penetrations of the structural portions (including the roof, demising walls and/or floor slab) of the Demised Premises, or otherwise results in damage to those portions of the Demised Premises for which, by the applicable provisions of the Lease, the Landlord may be obligated to maintain or perform required repairs or maintenance on, the same shall be repaired and/or restored, as the case may be, in a good and workmanlike manner to substantially the same condition as existing immediately prior to such penetrations and/or damage, by and at the sole cost of Tenant. Notwithstanding anything to the contrary, however, Tenant shall use its best efforts not to damage any of the structural portion of the demised premises.
12. Indemnification. Kmart agrees to indemnify, defend and hold Landlord, Landlord's Mortgagee, and their respective agents, servants, employees, officers and directors harmless, from any and all loss, damage, liability, cost, claim or expense (including reasonable attorneys fees), which Landlord, Landlord's Mortgagee, and their respective agents, servants, employees, officers and directors, may pay or become obligated to pay on account of any, all and every demand or claim, or assertion of liability, or any claim or action bounded thereon arising or alleged to have arisen out of any act of omission of Tenant, its agents, servants, employees, contractors, and subcontractors, in connection with the construction of the Kmart Expansion, whether such claim or claims, action of actions be for damages, injury to person or property, including the property of Landlord; or death of any person, made by any person, group or organization, whether employed by either of said parties hereto or otherwise.
13. Ingress/Egress Driveway. That the Landlord shall, at its own cost and expense, construct an additional ingress and egress driveway into the shopping center, from Warnock Springs Road as depicted on Exhibit "B-1" to this Lease.
14. Governing Law. That the expansion shall be incorporated and governed by the terms of this lease dated August 28, 1979, as amended. Provided in the event of any conflict between the terms and provisions of this Second Amendment of Lease and the Lease, the terms and provisions of this Second Amendment of Lease shall be controlling.

Except as expressly modified and provided for herein, the terms and provisions of said lease are affirmed by the parties hereto, and it is hereby further agreed that all of the terms and conditions of the aforementioned lease shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto caused this instrument to be executed as of the date and year first above written.

WITNESSES:

Jennifer Mizzard
Donna Scott

LANDLORD

J.D. ASHLEY AND LARRY WALLACE
D/B/A UNIVERSITY PLAZA
SHOPPING CENTER

J.D. Ashley
By: _____
Attest: Larry Wallace

TENANT

KMART CORPORATION

James P. Rauter
Rhonda A. Wilson

By: M. L. Skiles
M. L. Skiles, Vice President
Attest: C. S. [Signature]

799JPR

ACKNOWLEDGEMENTS

STATE OF MICHIGAN)
) SS.
COUNTY OF OAKLAND)

I hereby certify that on this 19th day of August, 1991, before me, Diane M. Shires, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared M. L. Skiles and C. E. Lotzar, 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 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: 8-1-94

Diane M. Shires
Notary Public

DIANE M SHIRES
Notary Public, Oakland County, Mich.
My Commission Expires August 1, 1994

STATE OF Arkansas)
) SS.
COUNTY OF Pulaski)

I hereby certify that on this 21st day of August, 1991, before me, Melinda A. Sutton, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared J.D. Ashley and Larry Wallace who are known to me to be the Partners of University Plaza who, being by me duly sworn, did depose and say that they reside in Arkansas; that they executed the foregoing instrument; on behalf of said Partnership they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its free and voluntary act.

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: March 7, 2001

Melinda A. Sutton
Notary Public

EXHIBIT "A-1"

KMART

UNIVERSITY PLAZA SHOPPING CENTER

A part of the E 1/2, SE 1/4 SEC. 12 and part of the E 1/2 of the NE 1/4, NE 1/4 SEC. 13 all in T-17-S, R-21-W, Columbia County, AR. being more particularly described as follows:

Beginning at the SE cor. of said SEC. 12; Thence SOUTH 17.17'; Thence West 142.0'; Thence SOUTH 273.8' to the North R.O.W. of East Main St.; Thence along said R.O.W. N-89°31'W, 230.01'; Thence leaving said R.O.W. run North 145.0'; Thence West 188.0'; Thence South 143.41' to the North R.O.W. of East Main St.; Thence along said R.O.W. N-89°31'W, 42.0'; Thence leaving said R.O.W. run North 275.0'; Thence N-25°00'W, 32.78'; Thence N-89°35'W, 37.53'; Thence N-0°50'E, 750.0'; Thence N-55°01'W, 72.77' to a point on the Easterly R.O.W. of Warnock Springs Road; Thence N-24°12'E, 36.0' along the Easterly R.O.W. of Warnock Springs Road; Thence leaving said R.O.W. run S-55°01'E, 119.55'; Thence East 71.0'; Thence North 200.0'; Thence East 90.0'; Thence N-40°07'E, 62.04'; Thence East 388.42'; Thence South 1021.27' to the P.O.B containing 735,321.86 square feet (16.88 AC±)

Parties

THIS MEMORANDUM OF LEASE dated this 28th day of August, 1979, between J.D. Ashley and Larry C. Wallace d/b/a University Plaza Shopping Center a partnership ~~corporation~~ having its principal office at 8th Floor, Twin City Bank Building, One Riverfront Place, North Little Rock, Arkansas (herein referred to as "Landlord"), and K MART CORPORATION a Michigan corporation having its principal office at 3100 West Big Beaver Road, Troy, Michigan 48064, (herein referred to as "Tenant"),

WITNESSETH: That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations and the further consideration of the rents reserved and the covenants and conditions more particularly set forth in a certain lease between Landlord and Tenant and bearing even date herewith, Landlord and Tenant do hereby covenant, promise and agree as follows:

SEE PAGE 2A

Demised Premises

~~1. Landlord does demise unto Tenant and Tenant does take from Landlord for the term hereinafter provided, and any extension thereof, the following property:~~

State of Arkansas, Columbia County
I hereby certify that the foregoing is a true copy of the original on file in this office

Harold Rogers, Circuit Clerk

By Becki Mayo, DC.

Term

2. The lease term shall commence upon the date of occupancy by Tenant of said building, 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, Tenant shall have the option to extend the lease term for ten----- (10) successive periods of five----- (5) additional years each.

SEE PAGE 2A

Building Areas

3. Landlord covenants, during the period commencing with the date of execution of the aforesaid lease and ending upon the last day of the lease term and any extension or renewal thereof, that it will not erect or construct any buildings or other structures upon land described in Exhibit "A", except as shown on Exhibit "B"; provided, however, in the event that the date of occupancy by Tenant of the demised premises shall not occur prior to such date as shall be seven (7) years from the date of the aforesaid lease, then the restrictions imposed by this Article shall cease and determine and shall be of no further force or effect.

Signs

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

from time to time

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, and bearing such legend or inscription as Tenant shall determine. Tenant shall have the option to utilize the lighting standards in the parking lot for advertising purposes by attaching, or causing to be attached, signs advertising any and all products and services as Tenant shall elect.

Signs
(cont'd)

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

SEE PAGE 2A

The sole purpose of this instrument is to give notice of said lease and all its terms, covenants and conditions to the same extent as if said lease were fully set forth herein.

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

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

WITNESSES:

Thomas N. Taylor

Suzanne S. Gordon

Debra A. Triffitt
Shelly J. Kudick

J. D. Ashley and Larry C. Wallace
d/b/a, University Plaza Shopping
Center, A Partnership

By: J.D. Ashley

J. D. Ashley, Partner
and

Larry C. Wallace

Larry C. Wallace, Partner

K MART CORPORATION

By: J. Johnson
J. Johnson, Vice President

Attest: C. E. Lotzar, Jr.
C. E. Lotzar, Jr., Assistant Secretary

used
uses

1. Landlord does demise unto Tenant and Tenant does take from Landlord for the term hereinafter provided, and any extension thereof, the following property: Tenant's completed building (designated K mart) as well as the directly underlying land; said completed building and site improvements to be constructed as hereinafter specified by Landlord at its expense on land comprising approximately 16.19 acres described in Exhibit "A" attached hereto and made a part hereof, constituting a shopping center to be situated in the City of Magnolia, County of Columbia, State of Arkansas, said building to be in the location depicted on Exhibit "B" attached hereto and made a part hereof, and of the following dimensions:

K mart Store	248' x 224'	= 55,552 sq. ft.
8 Bay Drive-Thru TBA		= 5,290 sq. ft.
Total		60,842 sq. ft.

Plus: Outdoor Garden Shop 56'3" x 99'1"

TOGETHER with the full licenses, rights, privileges and easements hereby given and granted by Landlord unto Tenant, including Tenant's agents, employees, customers, licensees and invitees to use the common areas including the sidewalks, service drives, parking aisles, driveways, streets and parking areas, in common with Landlord and the other Tenants of the land described in Exhibit "A" and their respective agents, employees, customers, licensees and invitees. Said completed building as well as the directly underlying land, together with the licenses, rights, privileges and easements appurtenant thereto set forth above, shall be hereinafter collectively referred to as the "demised premises."

SUBJECT to and together with the benefits of a certain Declaration of Restrictions and Easements attached hereto as Exhibit "D" and consented to by Tenant and which shall be executed and recorded by Landlord prior to the recording of the Memorandum of Lease executed between Landlord and Tenant simultaneously herewith.

2A
nt'd).

2.A. Notwithstanding the provision of this Article 2, Tenant may delay opening for business and the commencement date of the term of this lease until Landlord has satisfied the following conditions:

- i. The Kroger store is open for business, and,
- ii. Tenants occupying 50% of the remaining gross leaseable area in the enclosed mall are open for business.

3. Landlord represents, warrants and covenants that in addition to the construction of Tenant's building provided for herein, simultaneously with such construction, Landlord will erect the Landlord's buildings as depicted on Exhibit "B". Landlord further represents, warrants and covenants that it shall construct said Landlord buildings substantially in the size and location as they are depicted on Exhibit "B".

23
nt'd).

23. Landlord shall not, without Tenant's written consent, at any time utilize the exterior of Tenant's building, or the space above, for sign display purposes, nor permit any other advertising signs, billboards or posters to be displayed on any portion of Tenant's building.

Landlord shall not permit exposed neon, flashing or animated signs or billboards or posters, or roof or free-standing signs, to be erected or displayed on any portion of the premises described in Exhibit "A", and any signs hereafter affixed on any building shall be affixed parallel to and shall not project more than 20 inches out from any such building or marquee or facade thereon.

1/20
LCW

Signs
(cont'd).

Landlord shall not permit any advertising signs, billboards or posters to be displayed on any portion of the premises described in Exhibit "A", except signs which may be placed on Landlord's buildings, providing such signs shall be utilized solely for the purpose of advertising the name of the tenants thereof.

LCW

EXHIBIT "A" TO K MART LEASE

Beginning at the southeast corner of Section 12, Township 17 South, Range 21 West, Columbia County, Arkansas, run south 17.17 feet; thence west 142 feet; thence south 273.8 feet to the north R.O.W. of East Main Street, thence along said R.O.W. N89° 31' W 230.01 feet; thence leaving R.O.W. run north 145.0 feet; thence west 188.0 feet; thence south 143.41 feet to the north R.O.W. of East Main; thence along said R.O.W. N 89° 31' W 42.0 feet; thence leaving said R.O.W. run north 275.0 feet; thence north 25°00' W 32.78 feet; thence north 89° 35' W 37.53 feet; thence north 0° 50' E 756.02 feet; thence east 253.98 feet; thence north 247.44 feet; thence east 388.42 feet; thence south 1021.27 feet to the point of beginning, containing 16.19 acres in the SE¼ SE¼ of Section 12, and also the NE¼ NE¼ of Section 13, Township 17 South, Range 21 West.

ACKNOWLEDGMENTS

STATE OF }
COUNTY OF }ss:

I do hereby certify that on this _____ day of _____, 19____, before me, _____, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared _____ and _____ known to me to be the President and Secretary of _____, who, being by me duly sworn, did depose and say that they reside in _____ respectively; that they are the President and Secretary respectively of _____ 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: _____ Notary Public

STATE OF MICHIGAN }
COUNTY OF OAKLAND }ss:

I do hereby certify that on this 25th day of October, 1979, before me, Marie L. Czerniak, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared J. P. Johnson and C. E. Lotzar, Jr., known to me to be the Vice President and Assistant Secretary of K mart Corporation, who, being by me duly sworn, did depose and say that they reside in Birmingham, Michigan respectively; that they are the Vice President and Assistant Secretary respectively of K mart Corporation, the corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its and their free and voluntary act; and that they signed their names thereto by like order.

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

My commission expires: _____
Marie L. Czerniak
MARIE L. CZERNIAK Notary Public
Notary Public, Macomb County, Mich.
My Commission Expires July 23, 1983
Acting In Oakland County

STATEMENT

February 18, 2002

K-MART CORPORATION - STORE 9681
REAL ESTATE DEPARTMENT
3100 WEST BIG BEAVER
TROY, MI 48084

UNIVERSITY PLAZA SHOPPING CENTER
MAGNOLIA, AR
Re: 9681 - Unit: 401
TenantID: K-MART
Tenant Name: K-MART

Date	Description	Amount	Payment	Balance
11/13/2000	UPSC Common Area Reconciliation	14,734.92		14,734.92
11/15/2000	UPSC Common Area Reconciliation	13,914.63		13,914.63
11/15/2000	UPSC Common Area Reconciliation	10,871.04		10,871.04
11/15/2000	UPSC Common Area Reconciliation	11,208.06		11,208.06
02/26/2001	UPSC Common Area Reconciliation	11,770.26		11,770.26

PLEASE NOTE: PAYMENT IS DUE AT THE FIRST OF THE MONTH.

Total Amount Due **\$62,498.91**

Current	Over 30	Over 60	Over 90	Over 120
\$0.00	\$0.00	\$0.00	\$0.00	\$62,498.91

HILBURN, CALHOON, HARPER, PRUNISKI & CALHOUN, LTD.
ATTORNEYS AT LAW

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TELEPHONE (501) 372-0110
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POST OFFICE BOX 5551
NORTH LITTLE ROCK, ARKANSAS 72119

March 19, 2002

VIA FEDERAL EXPRESS

Kmart Corp.
c/o Trumbull Services
4 Griffin Road North
Windsor, Connecticut 06095

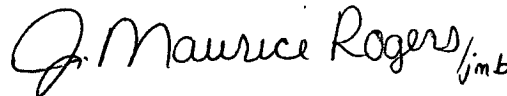
Re: Kmart Corporation, *et al.*,
Chapter 11 Bankruptcy No. 02-B02474

Dear Sir:

Please find enclosed the original and one copy of a Proof of Claim Due to Lease Rejection for filing on behalf of University Plaza Shopping Center in the above-referenced bankruptcy proceeding. Please return the extra file-marked copy to me in the enclosed, self-addressed stamped envelope.

Thank you for your assistance and cooperation in this matter.

Sincerely yours,



J. Maurice Rogers

JMR/jmb
Enclosures