

UNITED STATES BANKRUPTCY COURT

Northern District of Illinois Eastern Division

**PROOF OF CLAIM**

Name of Debtor

**KMART CORPORATION, et al.**

Case Number

**02-B02474**

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

Name of Creditor (The person or other entity to whom the debtor owes money or property)

**BANDERA FESTIVAL PARTNERS, L.P.**

Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars

Check box if you have never received any notices from the bankruptcy court in this case

Check box if the address differs from the address on the envelope sent to you by the court

Name and address where notices should be sent

**c/o Corey W. Haugland  
James, Goldman & Haugland, P.C.  
P.O. Box 1770  
El Paso, Texas 79949-1770**

Telephone number

**(915) 532-3911**

THIS SPACE IS FOR COURT USE ONLY

Account or other number by which creditor identifies debtor

**Store Number 3690**

Check here if this claim  replaces

amends a previously filed claim, dated \_\_\_\_\_

**1. Basis for Claim**

- Goods sold
- Services performed
- Money loaned
- Personal injury/wrongful death
- Taxes
- Other **Pre-Petition Lease Charges**

- Retiree benefits as defined in 11 U.S.C. § 1114(a)
- Wages, Salaries and compensations (Fill out below)

Your SS #. \_\_\_\_\_

Unpaid compensation for services performed

from \_\_\_\_\_ to \_\_\_\_\_  
(date) (date)

**2. Date debt was incurred:**

**November 30, 1987**

**3. If court judgment, date obtained:**

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

**\$ 165,425.53**

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

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

**5. Secured Claim.**

Check this box if your claim is secured by collateral (including a right to setoff)

Brief Description of Collateral

- Real Estate
- Motor Vehicle
- Other \_\_\_\_\_

Value of Collateral \$ **0.00**

Amount of arrearage and other charges at time case filed included in secured claim, if any \$ **0.00**

**6. Unsecured Priority Claim.**

Check this box if you have an unsecured priority claim

Amount entitled to priority \$ **0.00**

Specify the priority of the claim

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

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

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

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

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

THIS SPACE IS FOR COURT USE ONLY  
RECEIVED  
TRUMBULL COUNTY  
BANKRUPTCY

2002 MAR 25 PM 1:30

3/25/02

732 \$0

Date

03/19/2002

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)

**Corey W. Haugland, Attorney of Record**

**Statement**

Bandera Festival Partners, LP  
8401,8425 Bandera Road  
7723 Guilbeau  
San Antonio, Texas 78250

802-7723-CU  
K Mart #3690/K Mart Corp  
7723 Guilbeau  
San Antonio, Texas 78250

DATE	DESCRIPTION	AMOUNT DUE	BALANCE
4/01/01	CAM - monthly no tax	2,000 00	
5/01/01	CAM - monthly no tax	2,000 00	
6/01/01	CAM - monthly no tax	2,000 00	
7/01/01	CAM - monthly no tax	2,000 00	
8/01/01	CAM - monthly no tax	2,000 00	
9/01/01	CAM - monthly no tax	2,000 00	
10/01/01	CAM - monthly no tax	2,000 00	
2/01/02	CAM - monthly no tax	100 00	
3/01/02	CAM - monthly no tax	100 00	
3/01/02	2000-2001 CAM PRIOR YEAR N/TAX	11,259 08	
3/01/02	2001 Rec Water	4,804 94	
3/13/02	2001 PROPERTY TAX	135,161 51	
	PREVIOUS BALANCE		165,425 53
	Total Current Charges		0 00

*ALL PRE PAYMENT*

Total Amount Due

\$ 165,425 53

Comment

K Mart Corporation #3690  
Attn: Lease Administration  
3100 West Big Beaver Road  
Troy, MI 48084-3163

Statement Date: 3/13/02

Total Due: \$ 165,425.53

Keep this portion for your records

Return this portion with your payment

Bandera Festival Partners, LP  
8401,8425 Bandera Road  
7723 Guilbeau  
San Antonio, Texas 78250

Unit Reference # : 802-7723-CU  
Statement Date : 3/13/02  
Invoice # :  
Amount Due : \$165,425 53  
Bank Account # :

Bill to:

K Mart Corporation #3690  
Attn: Lease Administration  
3100 West Big Beaver Road  
Troy, MI 48084-3163

Send Remittance to:

Bandera Festival Partners, LP  
8401,8425 Bandera Road  
7723 Guilbeau  
San Antonio, Texas 78250

Lease Options

Option Type	Notice Start	Notice End	Option Begin	Option End	Option on Unit #	Square Feet
RENEWAL	4/30/13	4/30/13	11/01/13	10/31/18	NA -	86,479 00
10-50yr renewal option w/no steps						
Rate per Sq Ft	5 25		Rate per Mth	37,834 58	Year	454,015 00
RENEWAL	4/30/18	4/30/18	11/01/18	10/31/23	NA -	86,479 00
Rate per Sq. Ft	5 25		Rate per Mth	37,834 58	Year	454,015 00
RENEWAL	4/30/23	4/30/23	11/01/23	10/31/28	-	86,479 00
Rate per Sq Ft	5 25		Rate per Mth	37,834 58	Year	454,015 00

Chronological History

Date	Code	Description	Amount	Balance
4/10/00	CPN	CAM PY RECOVERY NONTAX 1999	(2,482 10)	(2,482 10)
10/01/00	CM3	CAM - monthly no tax	191 12	(2,290 98)
11/01/00	CM3	CAM - monthly no tax	191 12	(2,099 86)
12/01/00	CM3	CAM - monthly no tax	191 12	(1,908 74)
1/01/01	CM3	CAM - monthly no tax	191 12	(1,717 62)
2/01/01	CM3	CAM - monthly no tax	3,376 35	1,658 73
3/01/01	CM3	CAM - monthly no tax	3,376 35	5,035 08
4/01/01	CM3	CAM - monthly no tax	3,120 72	8,155 80
4/01/01	RNT	Monthly Rent	20,784 99	28,940 79
4/20/01	CPN	CAM PY RECOVERY NONTAX 2000	(11,418 71)	17,522 08
5/01/01	CM3	CAM - monthly no tax	3,120 72	20,642 80
6/01/01	CM3	CAM - monthly no tax	3,120 72	23,763 52
7/01/01	CM3	CAM - monthly no tax	3,120 72	26,884 24
7/24/01	CPN	CAM PY RECOVERY NONTAX 1998	4,313 89	31,198 13
7/24/01	CPN	CAM PY RECOVERY NONTAX 1999	(4,400 48)	26,797 65
8/01/01	CM3	CAM - monthly no tax	3,120 72	29,918 37
9/01/01	CM3	CAM - monthly no tax	3,120 72	33,039 09
9/01/01	RNT	Monthly Rent	2,169 92	35,209 01
10/01/01	CM3	CAM - monthly no tax	3,120 72	38,329 73
10/08/01	CPN	Pymt Batch 280 Check 1130561	(4,500 00)	33,829 73
10/08/01	CM3	Pymt Batch 298 Check 1130969	(39,834 58)	(6,004 85)
10/09/01	RNT	Monthly Rent	37,834 58	31,829.73
10/26/01	CM3	Correct Adjustment	988 36	32,818 09
10/26/01	CM3	Adjustment to correct Balance	23 28	32,841 37
10/26/01	RNT	Adjustment to correct Balance	(14,314 77)	18,526 60
10/26/01	RNT	Adjustment to correct Balance	(2,169 92)	16,356 68
10/26/01	CM3	Correct Monthly CAM Charges	(988 36)	15,368 32
10/26/01	CM3	Correct Monthly CAM Charges	(988 36)	14,379 96
10/26/01	CM3	Correct Monthly CAM Charges	(988 36)	13,391 60
10/26/01	CM3	Correct Monthly CAM Charges	(988 36)	12,403 24
10/26/01	CM3	Correct Monthly CAM Charges	(988 36)	11,414 88

## Chronological History

Date	Code	Description	Amount	Balance
10/26/01	CM3	Correct Monthly CAM Charges	(988 36)	10,426 52
10/26/01	CPN	CAM Prior Yr n/t Settlement	4,500 00	14,926 52
11/01/01	CM3	CAM - monthly no tax	2,132 36	17,058 88
11/01/01	RNT	Monthly Rent	37,834 58	54,893 46
11/02/01	CM3	Pymt Batch 813 Check 1133519	(39,834 58)	15,058 88
11/06/01	CM3	Billing Adjustment	(132 36)	14,926 52
11/06/01	CM3	Billing Adjustment	(132 36)	14,794 16
11/06/01	CM3	Billing Adjustment	(132 36)	14,661.80
11/06/01	CM3	Billing Adjustment	(132 36)	14,529 44
11/06/01	CM3	Billing Adjustment	(132 36)	14,397 08
11/06/01	CM3	Billing Adjustment	(132 36)	14,264 72
11/06/01	CM3	Billing Adjustment	(132 36)	14,132 36
11/06/01	CM3	Billing Adjustment	(132 36)	14,000 00
12/01/01	CM3	CAM - monthly no tax	2,000 00	16,000 00
12/01/01	RNT	Monthly Rent	37,834 58	53,834 58
12/03/01	CM3	Pymt Batch 130 Check 1136206	(39,834 58)	14,000 00
1/01/02	CM3	CAM - monthly no tax	2,000.00	16,000 00
1/01/02	RNT	Monthly Rent	37,834 58	53,834 58
1/01/02	CM3	Pymt Batch 510 Check 1138765	(39,834 58)	14,000 00
2/01/02	CM3	CAM - monthly no tax	2,100 00	16,100 00
2/01/02	RNT	Monthly Rent	37,834 58	53,934 58
2/05/02	CM3	Pymt Batch 949 Check 1200268	(39,834 58)	14,100 00
3/01/02	CM3	CAM - monthly no tax	2,100 00	16,200 00
3/01/02	RNT	Monthly Rent	37,834 58	54,034 58
3/01/02	WAT	2001 Rec Water	4,804 94	58,839 52
3/01/02	CPN	2000-2001 CAM PRIOR YEAR N/TA	11,259 08	70,098 60
3/04/02	CM3	Pymt Batch 361 Check 1201261	(39,834 58)	30,264 02
3/13/02	PTP	2001 PROPERTY TAX	135,161 51	165,425 53



Kmart Corporation  
International Headquarters  
Real Estate Department  
3100 West Big Beaver Road  
Troy MI 48084-3163

March 3, 1992

United Investors Realty Trust, Trustee  
c/o Jerry Steuart  
Trammell Crow Company  
1900 NCNB Plaza  
300 Convent Street  
San Antonio, TX 78205

RE: Lease dated November 30, 1987 between Bandera Festival, Ltd., as Landlord, and Kmart Corporation, as Tenant, for premises located in San Antonio, Texas and known as Kmart #3690.

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Gentlemen:

The undersigned, as Tenant in the above described Lease, hereby confirms the following:

THAT it has accepted and now occupies the premises. The primary lease term expires on October 31, 2013, and there are ten 5-year renewal options.

THAT rental payments commenced on October 9, 1988, and rental payments have been made through March 31, 1992. The current fixed minimum monthly rental is \$37,834.58.

THAT, to the best of Tenant's knowledge, there are no offsets or credits against minimum rentals, nor have rentals been prepaid.

THAT all improvements and space required to be furnished according to the Lease have been duly delivered by Landlord and accepted by Tenant, and all work required to be performed by Landlord under the Lease has been completed (excluding any undetermined latent defects of which Tenant is not currently aware).

THAT the current outstanding receivables in the amount of \$    -0-     and/or those not yet billed which are due and owing by the current Landlord will remain the current Landlord's responsibility through the closing date, however these charges, if unpaid, will remain against the property and shall

become the responsibility of the purchaser or any successor Landlord.

THAT, there are certain outstanding Landlord obligations listed as follows:

1. Roof leaks in at least three locations including TV area, office area and Ladies Department.

Apart from these items, to Tenant's knowledge, without having made a current in-depth inspection of the premises, there are no defaults by Landlord under the Lease. This representation is intended to indicate the serviceability of the premises, except for the items listed above, for Tenant's business purposes as of the date hereof, and may not be deemed a warranty as to their continuing fitness, nor shall it relieve Landlord, its successors or assigns of any obligations provided for in the Lease. If desired, Landlord may, with prior notification to Tenant, arrange to inspect the premises.

THAT the Lease has not been modified, altered or amended and the Lease is in full force and effect.

THAT this certification is made with the knowledge that Canadian Imperial Bank of Commerce may consummate a loan on this property and that they will rely upon the truth of this certificate among other factors in disbursing funds under said loan.

Sincerely,

KMART CORPORATION

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

A:EST3690



Signs

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

Tenant shall have the option to erect at its sole cost and expense upon any portion of the demised premises signs of such height and other dimensions as Tenant 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.

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

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

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

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

WITNESSES:

LANDLORD

*AK* BANDERA FESTIVAL, LTD.

*DM Douatta*

BY: *Michael J. Jaffe*  
Michael Jaffe Vice President

*Marion L. Lane*

Attest: \_\_\_\_\_

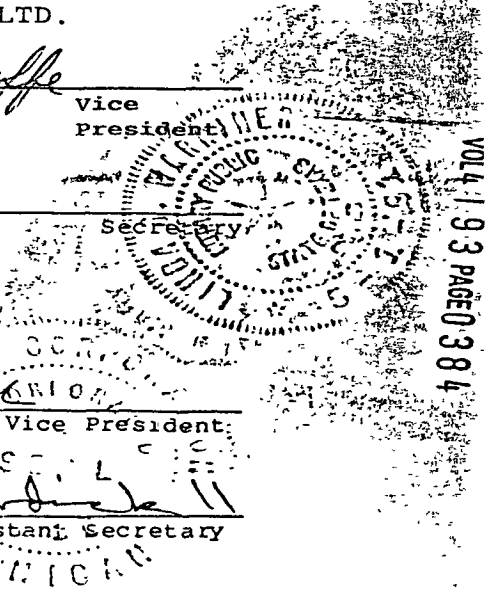
TENANT  
K MART CORPORATION

*Ruth Richardson*

BY: *M. L. Skiles*  
M. L. Skiles Vice President

*Teresa L. Riddle*

Attest: *DA Burdick*  
Assistant Secretary





ACKNOWLEDGMENTS

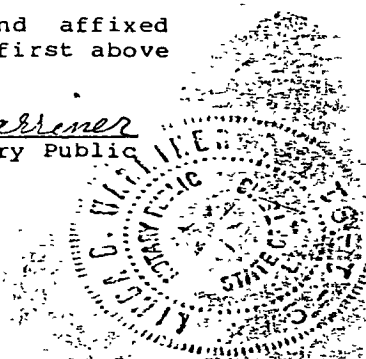
STATE OF TEXAS)  
COUNTY OF TARRANT)SS:

BANDERA  
FESTIVAL, LT.

I do hereby certify that on this 4th day of October, 1987, before me, Linda D. Warriner, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared Michael Jaffe known to me to be the General Partner of ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ who, being by me duly sworn, did depose and say that they reside in 1900 Interfirst Plaza, 300 Covent Street, San Antonio, Texas, 78205 respectively; that they are the General Partners respectively of Crow - Birnbaum - Jaffe #2, 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: 5-1-91 Linda D. Warriner  
Notary Public

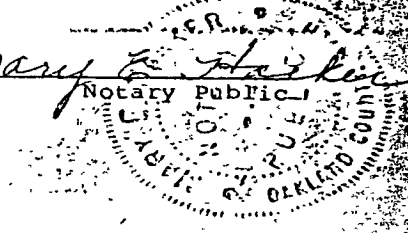


STATE OF MICHIGAN)  
COUNTY OF OAKLAND)SS:

I do hereby certify that on this 30th day of November, 1987, before me, Mary E. Harker, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared M. S. Miles and H. H. Burdick, known to me to be the Vice President and Assistant Secretary of K mart Corporation, who, being by me duly sworn, did depose and say that they reside in Rochester MI and Farmington MI 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.

MARY E. HARKER  
Notary Public in the Oakland County Mich.  
My commission expires June 11, 1989 Mary E. Harker  
Notary Public



VOL 4 | 93 PAGES 385

RETURN TO:  
SAN ANTONIO TITLE CO.  
P. O. BOX 5630  
SAN ANTONIO, TEXAS 78201

FIELD NOTES  
 FOR

Being 8.42 acres of land out of 20.7492 acre parcel, out of the Jose Alameda Survey No. 81, Abstract No. 26, County Block 4017, Bexar County, Texas, and being more particularly described by metes and bounds as follows:

- BEGINNING: At a set iron rod in the east right-of-way of Mystic Park, as recorded in Volume 9512, Pages 123 and 124 of the Plat Records of Bexar County, Texas, from which the P.C. curb return at the intersection of Mystic Park and Guilbeau Road bears S 02°17'18" E, a distance of 166.23 feet;
- THENCE: N 02°17'18" W, a distance of 393.42 feet with the east right-of-way of Mystic Park to a found iron rod for a point of curvature;
- THENCE: Curving to the left, with a radius distance of 813.00 feet, a central angle of 04°57'15", and an arc length of 70.30 feet to a found iron rod for a point of tangency, said point also being the northwest corner of this tract;
- THENCE: S 89°49'03" E, a distance of 630.48 feet to a set iron rod for the northeast corner of this tract;
- THENCE: S 00°10'57" W, a distance of 130.55 feet to a set iron rod for an angle point;
- THENCE: S 45°10'57" W, a distance of 60.13 feet to a set iron rod for an angle point;
- THENCE: N 89°49'03" W, a distance of 90.00 feet to a set iron rod for an angle point;
- THENCE: S 00°10'57" W, a distance of 138.42 feet to a set iron rod for an angle point;
- THENCE: S 89°49'03" E, a distance of 235.00 feet to a set iron rod for an angle point;
- THENCE: S 00°10'57" W, a distance of 198.72 feet to a set iron rod for an angle point;
- THENCE: N 89°49'03" W, a distance of 140.00 feet, to a set iron rod for an angle point;
- THENCE: S 00°10'57" W, a distance of 142.86 feet to a set iron rod; said point being the southeast corner of this tract, and being 37.00 feet from the existing right-of-way of Guilbeau Road;

EXHIBIT "A" PARCEL "A"

VOL 193 PAGE 0386

- THENCE: N 89°49'03" W, a distance of 410.00 feet, being parallel to and 37.00 feet north of the existing north line of Guilbeau Road to a set iron rod for an angle point;
- THENCE: N 00°10'57" E, a distance of 190.00 feet to a set iron rod for an angle point;
- THENCE: N 89°49'03" W, a distance of 159.94 feet to the POINT OF BEGINNING and containing 8.42 acres (366,776 sq.ft.) of land, more or less, in Bexar County, Texas.

PREPARED BY: PAPE-DAWSON CONSULTING ENGINEERS, INC.  
JOB NO.: 9142-87-04  
DATE: August 4, 1987 - Revised August 18, 1987  
DOC. ID: FN10-1.41/1.2.2(080487)

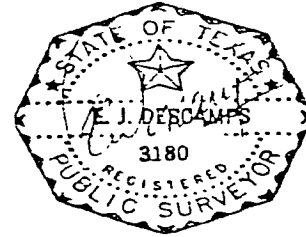


EXHIBIT "A" PARCEL "A"

STORE # 3690  
N.W.C. BANDERA RD. & GUILDEAU RD.  
SAN ANTONIO, TEXAS

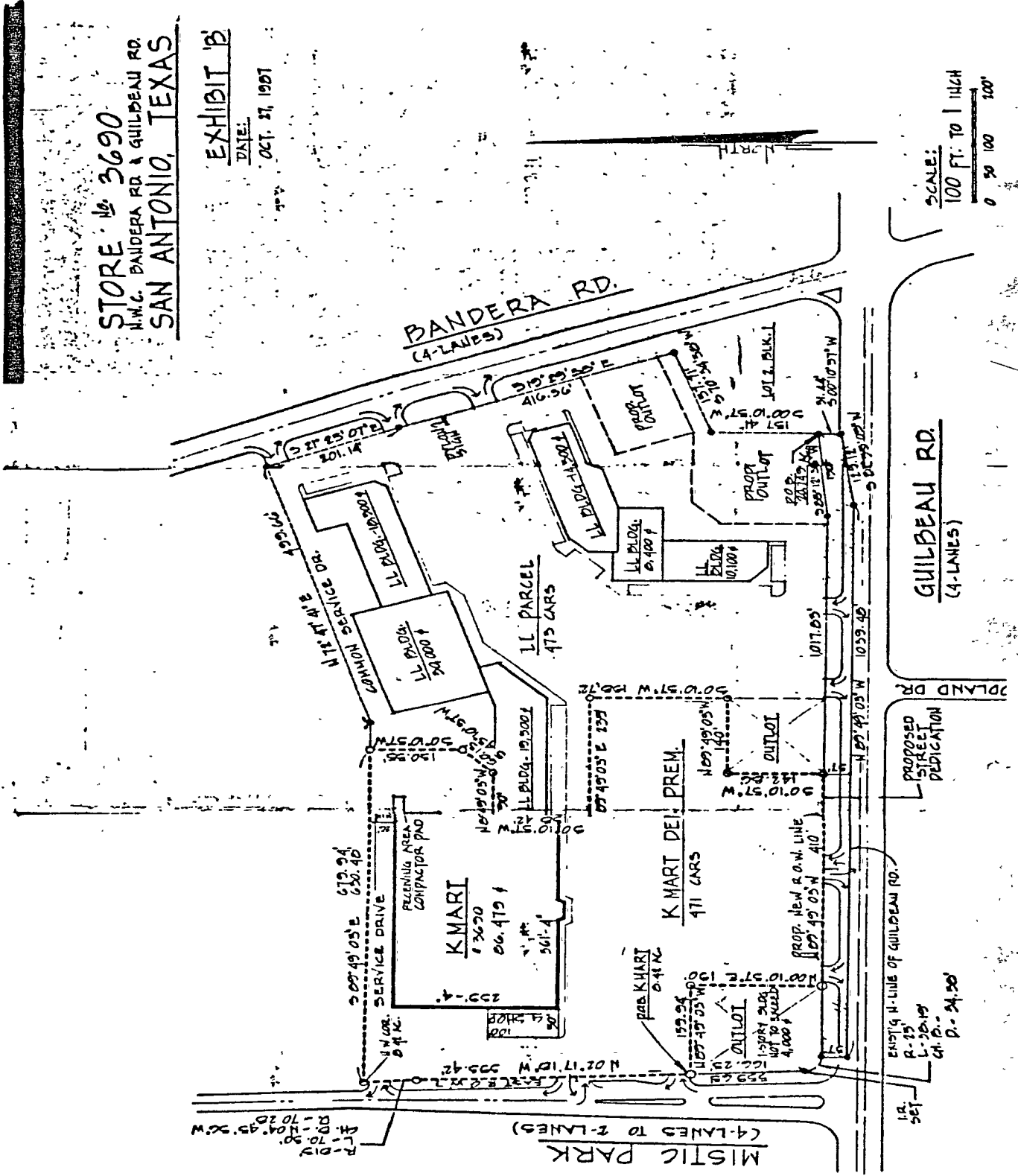
EXHIBIT B

DATE:

OCT. 31, 1981

RECORDERS MEMORANDUM  
ALL OR PARTS OF THE TEXT ON THIS PAGE  
WAS NOT CLEARLY LEGIBLE FOR SATISFACTORY  
RECORDATION

SCALE:  
100 FT. TO 1 INCH  
0 50 100 150



FILED  
COUNTY CLERK, BEXAR CO.

*ML*

1987 DEC 7 AM 10 52

Any provision herein which restricts the sale, rental or use of the described real property because of color or race is invalid and unenforceable under Federal Law THE STATE OF TEXAS } COUNTY OF BEXAR } I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me, and was duly RECORDED, in the Official Public Records of Real Property of Bexar County, Texas on

DEC 7 1987



*Racine D. Green*  
COUNTY CLERK BEXAR COUNTY, TEXAS

SAN ANTONIO, TEXAS

Parties

THIS LEASE made and entered into as of this 30<sup>TH</sup> day of ~~NOVEMBER~~ 1987, between Bandera Festival, LTD. a Texas Limited Partnership having its principal office at 1900 Interfirst Plaza, 300 Covent Street, San Antonio, Texas, 78205 (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:

Demised Premises

1. Landlord does demise unto Tenant and Tenant does take from Landlord for the lease term the following property: Tenant's completed building (designated K mart), together with site improvements to be constructed as hereinafter specified by Landlord at its expense together with land comprising not less than eight and four tenths (8.4) acres described in Exhibit "A" Parcel "A", attached hereto and made a part hereof, said improvements being a part of the Bandera Festival Shopping Center, and situated in the City of San Antonio, County of Bexar, State of Texas; said building to be in the location depicted on Exhibit "B" attached hereto and made a part hereof, and of the following dimensions:

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

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

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

Term

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

Annual Minimum Rental

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

Additional Rental

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

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

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

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

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

- (a) Sales of merchandise subsequently returned for refund or credit, merchandise transferred to a warehouse or another store of Tenant, discounts on merchandise which shall be allowed to employees of Tenant, or merchandise which shall be issued in redemption of trading stamps, if any, which shall have been issued free of charge to Tenant's customers at the time of sale of other merchandise or services;
- (b) Any and all taxes levied upon, assessed against, or measured by the receipt or purchase of merchandise by any occupant of said demised premises, and any and all occupational sales taxes and other taxes levied upon, assessed against, based upon, or measured by (i) such occupant's gross receipts, or any part thereof, or (ii) the sale or sales price of merchandise and services, or either, and which shall be payable by such occupant, whether or not collected by such occupant from its

customers as reimbursement or as agent of the taxing authority, and whether or not the same shall be commonly known as a sales tax, use tax, retailers' occupational tax, gross receipts tax or excise tax; provided, however, said taxes to be excluded from gross sales shall not include any net income tax, franchise, or any other tax not levied upon or computed upon gross sales or gross receipts, or any portion thereof; provided further, said taxes to be excluded from gross sales shall be excludable regardless of whether imposed under any existing or future orders, regulations, laws, statutes or ordinances;

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

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

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

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

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



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

Real  
Estate  
Taxes

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

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

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

The amount, if any, by which the ad valorem real estate taxes and assessments payable hereunder exceed Fifty Thousand DOLLARS (\$50,000.00) 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 not be carried forward and be deductible from additional rentals due and payable for succeeding lease years.

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

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

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

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

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

New  
Building by  
Landlord

6. Tenant's said buildings and site improvements shall be completed and delivered to Tenant promptly and with due diligence. If the performance by Landlord of any of its obligations hereunder is delayed by reason of the act or neglect of Tenant, act of God, strike, labor dispute, boycott, governmental restrictions, riot, insurrection, war, catastrophe, or act of the public enemy, the period for the commencement or completion thereof shall be extended for a period equal to such delay. Landlord warrants that a general contract for construction of said buildings and improvements referred to in Articles 1 and 12 hereof shall be let, rough site grading shall be completed and foundations and footings commenced not later than March 1, 1988. If for any reason whatever Landlord shall fail to comply fully with this warranty, Landlord shall so notify Tenant in writing and in such event Tenant shall have, in addition to other remedies which may be available to it by law or otherwise, the option to terminate this lease within sixty (60) days thereafter by notice to Landlord; provided, further, in the event that, regardless of the reason therefor, said buildings and site improvements shall not have been completed in accordance with working drawings and specifications prepared by Landlord as approved in writing by Tenant's Construction Department, and possession thereof tendered to Tenant prior to ~~January 1, 1989~~ <sup>January 1, 1989</sup> ~~August 31, 1987~~ <sup>August 31, 1987</sup>, 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.

*DMB*

*DMB*

Drawings  
and  
Specifi-  
cations

7. Tenant's said buildings and site improvements shall be constructed by Landlord, at its sole cost and expense, in accordance with the working drawings and specifications prepared by Landlord which shall, with respect to standards of construction and division of responsibility for supplying materials and equipment, substantially satisfy the provisions of Tenant's typical store drawings and specifications, prior receipt of which Landlord hereby acknowledges and which are identified as Set No K-0196, containing such additions, changes and modifications as is more particularly set forth in this certain letter dated September 8, 1987, respectively, written by Mr. Steve Li, Manager Design Division, K mart Corporation to Trammell Crow

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

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

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

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

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

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

Guarantee  
of  
Materials

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

Advance Possession for Fixturing and Merchandising

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

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

Parking and Other Common Areas

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

Landlord shall also construct or cause to be constructed upon certain property or rights-of-way contiguous to the premises described in Exhibit "A" Parcel "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.

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 Four Hundred Fifty Six (456) automobiles on basis of arrangement depicted on Tenant's working drawings and specifications.

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

Landlord shall not use the remainder of the property it owns in the Shopping Center for a movie theater, night club, disco, health spa, bowling alley or any other use that requires a disproportionate amount of parking. Notwithstanding the aforesaid Landlord may lease to a health spa no larger than 10,000 square feet as long as said health spa shall not be within 200 feet from the K mart demised premises.

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

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

In the event that unauthorized persons, including tenants or invitees of tenants occupying buildings now or at any future time located beyond the limits of the land described in Exhibit "A" Parcel "B" utilize the demised premises for parking or other purposes to an extent which shall be objectionable to Tenant, Landlord shall at its sole expense, upon written request by Tenant, take whatever reasonable action as shall be so requested to prevent said unauthorized utilization. Notwithstanding the foregoing, Landlord and other Tenants of the Shopping Center and their employees and invitees shall have the non-exclusive right to use the driveways on the demised premises throughout the term of the Lease without payment to Tenant.

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

Store  
Opening

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

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

Landlord's  
Representations and  
Warranties

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

Landlord and Tenant agree that the outlot's shall have a height restriction of 18 feet from its grade level. That said height of the outlot shall at no time be greater than seven (7) feet lower than the K mart store. Landlord and Tenant agree that Landlord may construct, at his own discretion, up to five one level structures on said outlot's as depicted on the attached Exhibit "B".

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

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

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

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

Options  
to Extend  
Lease

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

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

First  
Refusal to  
Purchase  
Option

14. Omitted

Repairs and  
Maintenance

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

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

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

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

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

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

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



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

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

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

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

Alterations  
and  
Additional  
Construction

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

Tenant may, at its own expense, at any time, erect or construct additional buildings or structures in the Expansion

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

Utilities

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

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

Governmental Regulations

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

Exculpation

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

Damage to Demised Premises

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

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

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

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

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

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

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

Eminent  
Domain

21. In the event all of Tenant's buildings constructed by Landlord shall be expropriated or the points of ingress and egress to the public roadways substantially as depicted on Exhibit "B" be materially impaired by a public or quasi-public authority, Tenant shall have the option to terminate this lease as of the date Tenant shall be deprived thereof.

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

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

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

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

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

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

Use, Assign-  
ment and  
Subletting

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

Signs

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

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

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

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

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

Ingress and Egress

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

Landlord's Remedies

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

Bankruptcy

26. If a petition in bankruptcy shall be filed by Tenant, or if Tenant shall be adjudicated bankrupt, or if Tenant shall make a general assignment for the benefit of creditors, or if in any proceeding based upon the insolvency of Tenant a receiver of all of the property of Tenant shall be appointed and shall not be discharged within ninety (90) days after such appointment, then Landlord may terminate this lease by giving notice to Tenant of its intention 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 provide written notice to Landlord of such defect and Landlord shall have thirty (30) days to cure said defect. If Landlord fails to cure same Tenant shall have the option at Landlord's expense to correct such defect or to annul and void this lease with full reservation of its right to damages, if any.

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

- (a) Public utility easements not impairing Tenant's use of the demised premises.
- (b) Restrictive covenant of record.

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

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

Mortgage  
Subor-  
dination

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

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  
Defaults

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, (unless Tenant has been furnished a Nondisturbance Agreement with respect thereto) then Tenant may, after the continuance of any such default for thirty (30) 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  
Termination

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.

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, more than one Landlord, and (b) to any landlord which shall be either a corporation, an association, a partnership, or an 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 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.

Estoppel Certificate

39. Tenant agrees that it will from time to time, upon request by Landlord, execute and deliver to Landlord an Estoppel Certificate certifying that this lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified).

Brokerage

40. Tenant warrants that it has had no dealing with any broker or agent in connection with the negotiation or execution of this lease and Tenant agrees to indemnify and hold Landlord

harmless from and against any claims by any other Broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction.

Entire Agreement

41. This lease contains the entire agreement between the parties, and no agreement shall be effective to change, modify or terminate this lease in whole or in part unless such agreement is in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought.

Contingency

42. The terms of this lease are contingent upon the Landlord installing for Tenants use a pylon sign, at no cost to the Tenant, as indicated on the location described in the Exhibit "B".

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

WITNESSES:

D.M. Bouatta

Neuta Lane

LANDLORD

*AK* Bandera Festival, LTD., Texas Limited Partnership  
By: Crow-San Antonio Retail #1, Inc., a Texas Corporation  
General Partner

By: Michael N. Jaffe  
Michael Jaffe *Jaffe* General Partner  
President

TENANT  
K MART CORPORATION

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

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

Attest: \_\_\_\_\_  
Assistant Secretary

harmless from and against any claims by any other Broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction.

Entire Agreement

41. This lease contains the entire agreement between the parties, and no agreement shall be effective to change, modify or terminate this lease in whole or in part unless such agreement is in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought.

Contingency

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

WITNESSES:

LANDLORD  
Bandera Festival, LTD., Texas  
Limited Partnership  
By: Crow-San Antonio Retail #1,  
Inc., a Texas Corporation,  
General Partner

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

By: \_\_\_\_\_  
Michael Jaffe Vice  
President

TENANT  
K MART CORPORATION

Ruth Richardson

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

Teresa L. Riddle

Attest: [Signature]  
Assistant Secretary

ACKNOWLEDGMENTS

STATE OF TEXAS)  
COUNTY OF TARRANT)SS:

I do hereby certify that on this 4th day of October, 1987, before me, Linda D. Warriner, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared Michael Jaffe known to me to be the General Partner of Crow - Birnbaum - Jaffe #2 who, being by me duly sworn, did depose and say that they reside in 1900 Interfirst Plaza, 300 Covent Street, San Antonio, Texas, 78205 respectively; that they are the General Partners respectively of Crow - Birnbaum - Jaffe #2, 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: 5-1-91

*Linda D. Warriner*  
Notary Public

STATE OF MICHIGAN)  
COUNTY OF OAKLAND)SS:

I do hereby certify that on this 30th day of November, 19 87, before me, *Mary E. Harker*, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared *M. R. Skelos* and *N. W. Quddick II*, known to me to be the Vice President and Assistant Secretary of K mart Corporation, who, being by me duly sworn, did depose and say that they reside in *Rochester MI and Farmington, MI* 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.

MARY E. HARKER  
Notary Public, Oakland County, Mich.

My commission expires Commission Expires June 11, 1989

*Mary E. Harker*  
Notary Public



9310 BROADWAY SAN ANTONIO, TEXAS 78217  
512/824-9494

### FIELD NOTES

Being 8.42 acres of land out of 20.7492 acre parcel, out of the Jose Alameda Survey No. 81, Abstract No. 26, County Block 4017, Bexar County, Texas, and being more particularly described by metes and bounds as follows:

- BEGINNING: At a set iron rod in the east right-of-way of Mystic Park, as recorded in Volume 9512, Pages 123 and 124 of the Plat Records of Bexar County, Texas, from which the P.C. curb return at the intersection of Mystic Park and Guilbeau Road bears S 02°17'18" E, a distance of 166.23 feet;
- THENCE: N 02°17'18" W, a distance of 393.42 feet with the east right-of-way of Mystic Park to a found iron rod for a point of curvature;
- THENCE: Curving to the left, with a radius distance of 813.00 feet, a central angle of 04°57'15", and an arc length of 70.30 feet to a found iron rod for a point of tangency, said point also being the northwest corner of this tract;
- THENCE: S 89°49'03" E, a distance of 630.48 feet to a set iron rod for the northeast corner of this tract;
- THENCE: S 00°10'57" W, a distance of 130.55 feet to a set iron rod for an angle point;
- THENCE: S 45°10'57" W, a distance of 60.13 feet to a set iron rod for an angle point;
- THENCE: N 89°49'03" W, a distance of 90.00 feet to a set iron rod for an angle point;
- THENCE: S 00°10'57" W, a distance of 138.42 feet to a set iron rod for an angle point;
- THENCE: S 89°49'03" E, a distance of 235.00 feet to a set iron rod for an angle point;
- THENCE: S 00°10'57" W, a distance of 198.72 feet to a set iron rod for an angle point;
- THENCE: N 89°49'03" W, a distance of 140.00 feet, to a set iron rod for an angle point;
- THENCE: S 00°10'57" W, a distance of 142.86 feet to a set iron rod, said point being the southeast corner of this tract, and being 37.00 feet from the existing right-of-way of Guilbeau Road;

### EXHIBIT "A" PARCEL "A"

Field Notes for  
8.42 Acre Tract  
Page 2 of 2

THENCE: N 89°49'03" W, a distance of 410.00 feet, being parallel to and 37.00 feet north of the existing north line of Guilbeau Road to a set iron rod for an angle point;

THENCE: N 00°10'57" E, a distance of 190.00 feet to a set iron rod for an angle point;

THENCE: N 89°49'03" W, a distance of 159.94 feet to the POINT OF BEGINNING and containing 8.42 acres (366,776 sq.ft.) of land, more or less, in Bexar County, Texas.

PREPARED BY: PAPE-DAWSON CONSULTING ENGINEERS, INC.  
JOB NO.: 9142-87-04  
DATE: August 4, 1987 - Revised August 18, 1987  
DOC. ID: FN10-1.41/1.2.2(080487)

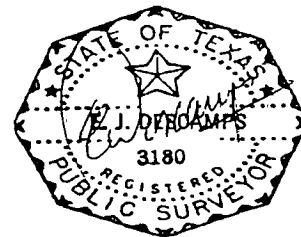


EXHIBIT "A" PARCEL "A"

PLAT OF:

1. A 20.7492-acre parcel of land out of N.C.B. 17929, San Antonio, Bexar County, Texas; and being more particularly described as follows:

BEGINNING at an iron pin found on the north right-of-way line of Guilbeau Road, the southwest corner of Lot 2, Block 1, Wildwood Subdivision Unit, 12-A, as recorded in Volume 9502, Page 8, Deed and Plat Records of Bexar County;

THENCE the following courses along the north right-of-way line of Guilbeau Road:

S.00° 10'57"W. a distance of 31.44 feet to a P.K. nail set;  
S.81° 55'05"W. a distance of 129.12 feet to an iron pin set and  
N.89° 49'03"W. a distance of 1039.48 feet to a P.K. nail set, the southwest corner of this parcel of land;

THENCE N.00° 10'57"E. a distance of 37.00 feet to an iron pin set, the southeast end of the curve return from the north right-of-way line of Guilbeau Road to the east right-of-way line of Mystic Park as recorded in Volume 9512, Pages 123-124, Deed and Plat Records of Bexar County;

THENCE northwesterly along said curve return to the right having a radius of 25.00 feet, a central angle of 87° 31'45" and a tangent length of 23.94 feet, an arc distance of 3819 feet to an iron pin set, the point of tangency;

THENCE north along the east right-of-way line of Mystic Park the following courses:

N.02° 17'18"W. a distance of 559.65 feet to an iron pin set, the point of curvature of a curve to the left and  
Along said curve having a radius of 813.00 feet, a central angle of 04° 57'15" and a tangent length of 35.17 feet, an arc distance of 7030 feet to an iron pin set, the northwest corner of this parcel of land,

THENCE S.89° 49'03"E. a distance of 679.94 feet to an iron pin set,

THENCE N.72° 47'41"E. a distance of 499.66 feet to an iron pin found on the southwest right-of-way line of Bandera Road, State Highway 16, the northeast corner of this parcel of land;

THENCE southeasterly along the southwest right-of-way line of Bandera Road the following courses:

S.21° 25'07"E. a distance of 201.14 feet to a concrete monument found and  
S.19° 29'38"E. a distance of 416.36 feet to an iron pin found,

THENCE S.70° 34'58"W., parallel with and 20.00 feet northwest of the northwest line of said Lot 2, a distance of 157.41 feet to an iron pin found,

THENCE S.00° 10'57"W., along the west line and extension thereof of said Lot 2, a distance of 157.41 feet to the point of beginning, and containing 903,835 square feet or 20.7492 acres of land, more or less.

2. A 19.7626-acre parcel of land out of N.C.B. 17929, San Antonio, Bexar County, Texas; and being more particularly described as follows:

BEGINNING at an iron pin found on the north right-of-way line of Guilbeau Road, the southwest corner of Lot 2, Block 1, Wildwood Subdivision Unit 12-A, as recorded in Volume 9502, Page 8, Deed and Plat Records of Bexar County;

THENCE S.85° 12'38"W. a distance of 150.00 feet to an iron pin set;

THENCE N.89° 49'03"W. a distance of 1017.83 feet to an iron pin set, the point of curvature of the curve return from the north right-of-way line of Guilbeau Road to the east right-of-way line of Mystic Park, as recorded in Volume 9512, Pages 123-124, Deed and Plat Records of Bexar County;

THENCE northwesterly along said curve return to the right having a radius of 25.00 feet, a central angle of 87° 31'45" and a tangent length of 23.94 feet, an arc distance of 38.19 feet to an iron pin set, the point of tangency;

THENCE north along the east right-of-way line of Mystic Park the following courses:

N.02° 17'18"W. a distance of 559.65 feet to an iron pin set, the point of curvature of a curve to the left and

Along said curve having a radius of 813.00 feet, a central angle of 04° 57'15" and a tangent length of 35.17 feet, an arc distance of 70.30 feet to an iron pin set, the northwest corner of this parcel of land;

THENCE S.89° 49'03"E. a distance of 679.94 feet to an iron pin set;

THENCE N.72° 47'41"E. a distance of 499.66 feet to an iron pin found on the southwest right-of-way line of Bandera Road, State Highway 16, the north-east corner of this parcel of land;

THENCE southeasterly along the southwest right-of-way line of Bandera Road the following courses:

S.21° 25'07"E. a distance of 201.14 feet to a concrete monument found and

S.19° 29'38"E. a distance of 416.36 feet to an iron pin found;

THENCE S.70° 34'58"W., parallel with and 20.00 feet northwest of the north-west line of said Lot 2, a distance of 15771 feet to an iron pin found;

THENCE S.00° 10'57"W., along the west line and extension thereof of said Lot 2, a distance of 157.41 feet to the point of beginning, and containing 860,860 square feet or 19.7626 acres of land, more or less.

EXHIBIT "A" PARCEL "B"



JAMES, GOLDMAN & HAUGLAND, P.C.  
ATTORNEYS AND COUNSELORS AT LAW

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March 19, 2002

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

RE: Kmart Corporation; Bankruptcy Number 02 B 02474; in the Northern District of  
Illinois, Eastern Division  
(Store Number 3690 – San Antonio, Texas)

Dear Sir/Madam:

Included herewith, please find an original and two (2) copies of the Proof of Claim which I would like to file on behalf of Bandera Festival Partners, L.P. in the above-referenced matter.

Please return a file-stamped copy of the Proof of Claim to me in the self-addressed and stamped envelope provided for this purpose.

If you have any questions or problems with the foregoing, please call me.

Very truly yours,

JAMES, GOLDMAN & HAUGLAND, P.C.

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

  
Corey W. Haugland

CWH/jb  
Enclosures

cc: Randall Keith, Via First Class (w/enclosures)