

| | | | |
|--|---|---|-----------------------|
| UNITED STATES BANKRUPTCY COURT <u>Northern</u> | | DISTRICT OF <u>Illinois</u> | PROOF OF CLAIM |
| Name of Debtor KMART CORPORATION | | Case Number 02-2474 | |
| <p>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.</p> | | | |
| Name of Creditor (The person or other entity to whom the debtor owes money or property): KPT Properties, LP | | <input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court. | |
| Name and address where notices should be sent: Margaret R. Westbrook, Esq. Kennedy Covington Lobdell & Hickman, LLP P. O. Box 1070 Raleigh, NC 27606 Telephone number: 919-743-7311 | | | |
| Account or other number by which creditor identifies debtor: | | Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> amends a previously filed claim, dated: _____ | |
| 1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other <u>Pre-petition and post-petition rent</u> | | <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ to _____ <div style="text-align: center;">(date) (date)</div> | |
| 2. Date debt was incurred: On or before <u>January 22, 2002</u> | | 3. If court judgment, date obtained: | |
| 4. Total Amount of Claim at Time Case Filed: <u>\$ See Exhibit A</u> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges. | | | |
| 5. Secured Claim. <input type="checkbox"/> Check this box if you claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____ | | 6. Unsecured Priority Claim. <input checked="" type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority <u>\$ See Exhibit A</u> Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4000),* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4) <input type="checkbox"/> Up to \$1,800* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6) <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input checked="" type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(1). *Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment | |
| 7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. | | THIS SPACE IS FOR COURT USE ONLY RECEIVED TRUSTEES SERVICES DEPT. 1 25 MAR 25 PM 2:46 BANKRUPTCY 3/25/02 ML 756 | |
| 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, attached a summary. | | | |
| 9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim. | | | |
| Date 3/22/2002 | 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): Margaret R. Westbrook, attorney for KPT Properties, L.P. <i>Margaret R. Westbrook</i> | | |

**EXHIBIT A
TO PROOF OF CLAIM
K MART CORPORATION
(KPT Properties, LP)
(Lenoir Festival Shopping Center, Lenoir NC, Store 3838)**

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

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

| Location | Pre-Petition |
|------------------------|--------------|
| Lenoir, North Carolina | \$79,152.90 |

3. KMART Corporation entered into a lease agreement dated April 8, 1993 ("Lenoir Lease") for certain premises located in the Lenoir Festival Shopping Center, Lenoir, North Carolina. A copy of the Lenoir Lease is attached as **Exhibit B** to this Proof of Claim.

4. As of the date of the petition, the Debtor owed rent in the amount of \$79,152.90 under the Lenoir Lease.

5. Landlord therefore asserts an unsecured claim in the amount of **\$79,152.90** for pre-petition amounts due under the Lenoir Lease.

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

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

Knart #3838
Lenoir, North Carolina

Parties
Lenoir Realty
Associates Limited
Partnership

THIS LEASE made and entered into as of this ^{8TH} day of ^{APRIL}, 1993, between ~~Three L. Associates, a Connecticut Limited Partnership~~, having its principal office at 7000 W. Palmetto Park Road, Suite 408, Boca Raton, FL 33433 (herein referred to as "Landlord"), and KMART CORPORATION, a Michigan corporation having its principal office at 3100 West Big Beaver Road, Troy, Michigan 48084 (herein referred to as "Tenant"),

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

Demised
Premises

1. Landlord does demise unto Tenant and Tenant does take from Landlord for the lease term the following property: Tenant's completed building (designated Knart), together with site improvements to be constructed as hereinafter specified by Landlord at its expense together with land comprising not less than Nine and 88/100ths (9.88) acres described in Parcel "A" of Exhibit "A", attached hereto and made a part hereof, and situated in the City of Lenoir, County of Caldwell, State of North Carolina; said building to be in the locations depicted on Exhibit "B" attached hereto and made a part hereof, and of the following dimensions:

Knart Building: 381'4" in width by 239'4" in depth
Total Size: 94,841 sq. ft.

In addition, Landlord shall provide a fenced garden shop area having dimensions of 60' in width by 184' in depth, as indicated on Exhibit "B", attached hereto.

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

Landlord hereby reserves for itself and gives and grants unto Tenant during the lease term, including other tenants in the shopping center located within the land described in Exhibit "A" and their, as well as Tenant's agents, employees, customers, licensees and invitees the following licenses, rights, privileges and easements: the use of parking areas, common areas (including rest rooms and other facilities, if any), roadways, sidewalks and accessways to public streets and highways indicated on said Exhibit "B", together with the use of any delivery or servicing areas adjoining Tenant's said buildings or designated as such on Exhibit "B", which areas shall be adequate for the passage, unloading and, if necessary, turning around of trailer trucks and other commercial vehicles.

Term

2. The term of this lease shall commence upon the "date of occupancy by Tenant", as that term is defined in Article 10 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 12 hereof. The phrase "lease term", as used in this lease, shall be the term of this lease and any extension pursuant to said Article 12.

Annual
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 rental of FOUR HUNDRED SEVENTY TWO THOUSAND SEVEN HUNDRED TWENTY THREE DOLLARS (\$472,723), 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.

Real
Estate
Taxes

4. Tenant shall pay and discharge all ad valorem real estate taxes and all assessments, general or specific, and all substitutions or replacements thereof levied against the taxable premises during the term of the Lease, excluding therefrom payment of general or special assessments which are incurred or levied as a result of Landlord's activity in developing the demised premises for Tenant's occupancy.

The term "taxable premises", as used in this lease, shall be that certain land described in Parcel A of Exhibit "A" together with such buildings and other improvements located thereon.

Landlord and Tenant shall use their reasonable efforts to obtain a separate tax assessment with respect to the taxable premises. In the event that a separate tax assessment with respect to the taxable premises cannot be obtained, then for purposes of this lease, the parties shall refer to the office records of the assessing authority including but not limited to worksheets and field reports, in order to obtain the relevant land and building valuations required to calculate Tenant's separate liability for the real estate taxes hereunder.

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

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

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

Tenant shall not be chargeable with, nor be obligated to pay any income, profit, inheritance, estate, succession, gift, franchise, or transfer taxes which are or may be imposed upon Landlord, its successors or assigns, by whatsoever authority imposed or howsoever designated, except Tenant shall pay any so-called "Rent Tax", (including, but not limited to, a tax similar in

kind and nature as now imposed by the State of Florida upon rents payable), by whatever authority such tax shall be imposed.

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

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

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

Should any of the proceedings referred to in the preceding two paragraphs of this Article 4 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. If no refund shall be secured in any given proceeding, the party instituting the proceeding shall bear the entire cost.

New
Building by
Landlord

5. Tenant's said building and site improvements shall be completed and delivered to Tenant promptly and with due diligence. If the performance by Landlord of any of its obligations hereunder is delayed by reason of the act or neglect of Tenant, act of God, strike, labor dispute, boycott, governmental restrictions, riot, insurrection, war, catastrophe, or act of the public enemy, the period for the commencement or completion thereof shall be extended for a period equal to such delay. Landlord warrants that a general contract for construction of said building and improvements referred to in Articles 1 and 11 hereof shall be let, rough site grading shall be completed and foundations and footings commenced not later than August 1, 1993. If for any reason whatever Landlord shall fail to comply fully with this warranty, Landlord shall so notify Tenant in writing and in such event Tenant shall have, ~~in addition to other remedies which may be available to it by law or otherwise,~~ the option to terminate this lease within sixty (60) days thereafter by notice to Landlord; provided, further, in the event that, regardless of the reason therefor, said building and site improvements shall not have been completed in accordance with working drawings and specifications prepared by Landlord as approved in writing by Tenant's Construction Department, and possession thereof tendered to Tenant prior to March 1, 1994, then Tenant shall, at any time thereafter, have the further option of terminating this lease by notice to Landlord. ~~Notwithstanding anything to the contrary herein contained, in the event that the lease term shall not have commenced prior to such date as shall be seven (7) years from the date of this lease, then this lease shall be automatically terminated without further act of either party hereto.~~

Drawings and
Specifi-
cations

6. Tenant's said building and site improvements shall be constructed by Landlord, at its sole cost and expense, in accordance with the working drawings and specifications prepared by Landlord which shall, with respect to standards of construction and division of responsibility for supplying materials and equipment, substantially satisfy the provisions of Tenant's typical store drawings and specifications, prior receipt of which Landlord hereby acknowledges and which are identified as Set No. K-1282 containing such additions, changes, and modifications as are more particularly set forth in that certain letter dated June 12, 1992, written by S.K. Li, A.I.A., Director,

Design Division, Construction Department, Kmart Corporation to Ms. Betty Gooch, Konover & Associates, South, Inc., 7000 West Palmetto Park Road, Suite 408, Boca Raton, FL 33433, a copy of which letter is attached hereto and marked Exhibit "C".

Said typical drawings 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 changes to the typical drawings and specifications 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. In the event such changes result in extra construction costs to the Landlord, then Tenant shall pay Landlord the extra construction costs resulting from such changes. Any payments due shall be made within a reasonable period of time after demand is made for such payment.

Guarantee
of
Materials

7. Landlord shall unconditionally guarantee all work performed by or for the Landlord in the construction of Tenant's building and site improvements against defective workmanship and materials for a period of one (1) year from commencement of lease term or date of final acceptance in writing to Landlord by Tenant, whichever is later, unless a different period of time is expressly stated under a 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.

Advance
Possession
for
Fixturing
and
Merchan-
dising

8. For a period of seventy five (75) days after completion of Tenant's building by Landlord, as set forth in Article 10 (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 Tenant's 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 and tenant agree to make reasonable efforts to equitably distribute between Landlord and Tenant the cost of utility bills incurred during the period between Tenant entering the building for the purposes set forth in the Article 9 and opening for business.

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

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

Landlord shall also construct or cause to be constructed upon certain property or rights-of-way contiguous to the premises described in Exhibit "A", all sidewalks, driveways, streets, curbs, acceleration, deceleration and stacking lanes, traffic controls, and signals, directional signs and related improvements in accordance with said working drawings and specifications and the requirements of any governmental bodies.

Landlord covenants and represents that at the commencement of the lease term, there shall be 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 also covenants that the area within the demised premises provided for the parking of automobiles shall during the lease term be sufficient to accommodate not less than Four Hundred Seventy (470) automobiles on the basis of arrangement depicted on Tenant's working drawings and specifications.

Landlord further covenants that the aggregate area depicted on Exhibit "B" provided for the parking of automobiles shall during the lease term be sufficient to accommodate not less than Seven Hundred Thirty-Nine (739) automobiles on the basis of arrangement depicted on Tenant's working drawings and specifications.

At least seventy five (75) days prior to the commencement of the lease term, Landlord shall provide in accordance with said working drawings and specifications as approved by Tenant and as shown on Exhibit "B" all of the sidewalks, service drives, parking areas and entrances, from adjoining public streets to permit receiving and delivering of fixtures, merchandise and other property and to permit parking for persons involved in the pre-opening activities of the Tenant.

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 One Million and No/100 Dollars (\$1,000,000) with respect to injury to any one person and Two Million and No/100 Dollars (\$2,000,000) with respect to any one accident or disaster, and Five Hundred Thousand and No/100 Dollars (\$500,000) 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.

During the Lease term, Tenant shall reimburse the Landlord for its pro rata share of the liability insurance Landlord shall maintain for the common

areas of the Shopping Center premises. Tenant's pro rata share shall be computed by dividing the square footage of Tenant's building (excluding the unenclosed portion of Tenant's garden shop), by the square footage of the total number of additional buildings (including Tenant's building but excluding the unenclosed portion of Tenant's garden shop) that are actually located on the Shopping Center premises depicted on Exhibit "B" and described in Exhibit "A". Tenant shall pay said pro rata share within thirty (30) days after receipt of a statement from Landlord, which statement shall include a bill for the premium, a copy of the policy and a breakdown as to Tenant's pro rata share. In the event Landlord obtains the foregoing insurance with regard to the demised premises only, the Tenant shall pay the cost thereof.

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 liability insurance for the common areas located within Parcel "A" of Exhibit "A" by obtaining a separate policy or maintaining said insurance as part of its self-insurance program should Tenant's net worth be not less than One Hundred Million Dollars (\$100,000,000.00).

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 act, action, neglect or omission on the part of Landlord and/or Tenant (excluding Tenant's use of the common areas on Parcel A as provided in the last paragraph of this Article 10).

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

Tenant shall be entitled, at any time, to utilize portions of the common areas within Parcel A of Exhibit "A" for outdoor shows, entertainment or such other uses which in Tenant's judgment tend to attract the public, provided 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.

Store
Opening

10. 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 seventy-five (75) days (plus a period of time equal to any delays due to conditions beyond Tenant's control) after the date upon which (i) Tenant's building and site improvements shall be completed in accordance with said working drawings and specifications and the possession thereof shall be tendered to Tenant and Tenant shall have received a Certificate of Occupancy or temporary Certificate of Occupancy, and (ii) all of the representations and warranties set forth in Article 11 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 20 and January 10, the lease term shall not commence until January 11 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 10, 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 and after notice thereof to Landlord, 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.

Notwithstanding anything in this paragraph, and in the event that Landlord shall have completed the buildings and improvements depicted on Exhibit "B", including satisfying all punch list items and all representations and warranties of Landlord contained in this lease, then Tenant agrees to open its business in the demised premises for one day within 75 days of the "Date of Occupancy" by Tenant: as defined in this Article. Nothing herein shall construe this provision to provide for the continuous operation or occupancy of the premises or in any way affect this Lease and the obligations of Landlord provided herein.

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 on option, to be exercised by notice in writing given to the Tenant within one hundred twenty (120) days after 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) days period and the Tenant shall be released from any further liability under this lease.

Landlord's Representations and Warranties

11. 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 9 hereof. Landlord further covenants that it will not erect any buildings or other structures on the land described in Exhibit "A" except as shown on said Exhibit "B".

Landlord also represents, warrants, and covenants that a supermarket tenant of at least 37,898 square feet shall be under construction within the shopping center premises as depicted on Exhibit "B" and shall open for business not more than 90 days after the "Date of Occupancy" by Tenant.

~~Landlord represents, warrants and covenants that prior to the commencement of the term of this lease, Landlord shall at its sole expense have a traffic signal installed and operating at the location on US Highway 321, as depicted on Exhibit "B".~~

Landlord also represents, warrants and covenants that no instrument restricting the shopping center or encumbrance of Landlord's title to the land depicted on Exhibit "B", including but not limited to Mortgages, Declarations, Leases, Reciprocal Easement Agreements and Operating Agreements, shall impair Tenant's rights or use of the demised premises under this lease or create for Tenant, any additional financial or other obligation not set forth in this Lease and that any restrictions shown on Exhibit "B", including outlot restrictions, shall be strictly enforced by Landlord, its successors and assigns.

Landlord further represents, warrants, and covenants that the term of the existing lease dated February 1, 1977 between Kmart Corporation and Marvin M. Patron and Simon Konover for the presently operating Kmart store #9506 shall terminate upon the date that Tenant opens for business within the premises demised herein.

Landlord further represents, warrants and covenants that the land described in Exhibit "A" will, at the time of the commencement of construction by Landlord and at the time of the commencement of the lease term, be properly and unconditionally zoned for Tenant's intended use, 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.

Landlord represents, warrants and covenants that it will, with due diligence, comply with conditions and agreements set forth in Exhibit "D" relating to the construction of a traffic signal, at Landlord's sole expense, at Blowing Rock Boulevard (U.S. 321) at the southernmost ingress/egress drive but cannot represent or warrant that such traffic signal will be constructed prior to Tenant's opening.

The lease term shall not commence and said annual 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 rental; provided, further, in lieu thereof, Tenant shall pay monthly in arrears one percent (1%) of gross sales as defined herein 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 Article 3 hereof.

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

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

In the event Landlord's representations and warranties shall not be fulfilled within ninety (90) days after commencement of the lease term, Tenant thereafter shall have the option of (i) completing said representations and warranties at Landlord's cost and expense including, without limitation, overhead plus interest at the lower rate of eighteen percent (18%) per annum or the highest rate not prohibited by law, (ii) continue to pay monthly in arrears one percent (1%) of said gross sales until Landlord's said representations and warranties shall be fulfilled or (iii) terminating the

Lease by notice to Landlord, which notice shall state an effective date of termination of not less than sixty (60) days from the date of such notice.

Options to Extend Lease

12. (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 and Purchase Option

13. Intentionally omitted.

Repairs

14. Tenant shall at its own expense, carry out such repairs and maintenance as it deems necessary to keep the demised premises in good order and repair, but in no event shall Tenant be required to make any repairs or replacements (or be liable for the cost thereof) which shall be the obligation of Landlord under Article 7.

Notwithstanding the foregoing provisions of Article 14 herein set forth, Landlord shall contract for sweeping, striping and snow removal for the parking areas, driveways, sidewalks and streets of the common areas as shown on Exhibit B 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 the common areas as herein provided. Tenant's said share shall be based upon the ratio that the ground floor area of Tenant's building bears to the total gross ground floor area contained in all buildings actually erected on any portion of the land described in Exhibit "A", and depicted on Exhibit "B".

For purposes of this Article, the costs of maintaining the common areas and common facilities shall mean the following: (1) all amounts paid for cleaning and sweeping (which shall be performed as often as necessary but not less than once weekly) and restriping (which shall be done not less than once every two years) of the parking areas, sidewalks and driveways, including snow and ice removal, which shall be performed as often as necessary; (2) maintenance and repair of planted or landscaped areas; (3) maintenance, repair and replacement of bulbs and light standards with respect to the parking lot lighting and electrical cost of lighting if Tenant's parking lot lighting is not metered directly into Tenant's meter as provided in this Article; (4) and wages 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 (other than in connection with resurfacing of the parking areas, sidewalks and driveways), depreciation, permit fees, electric lighting charges beyond Tenant's normal business hours unless Tenant is operating during extended hours, rubbish

removal for other tenants, or other administrative expenses, including overhead.

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

Tenant may, upon seven (7) days notice, have Landlord's records of common area expenditures for the previous twelve (12) month period audited by Tenant's accountant; should such audit disclose any overpayment by Tenant, Landlord shall remit said overpayment upon demand.

Notwithstanding anything contained herein to the contrary, Tenant reserves the right, for any reason whatsoever, at any time upon thirty (30) days prior written notice to Landlord to assume the duties of Landlord to maintain the common areas located within Parcel A of Exhibit "A". If Tenant shall elect to maintain the common areas located within Parcel A of Exhibit "A", then, and in such event, Tenant shall not during such period be required to make any contributions to the common area costs as hereinabove defined, however, Landlord shall maintain the remaining portions of the common area described in Exhibit "A".

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

Alterations
and Addi-
tional
Construction

15. Tenant may, at its own expense and at any time, expand its building or erect or construct additional buildings or structures on any portion of the demised premises and make such alterations, additions or changes, structural or otherwise, in and to its buildings as it may deem necessary or suitable. The Tenant may at any time raze the whole or any part of any building at any time standing upon the demised premises, provided that, if it does so, it will, without unnecessary delay, replace that which is demolished with a structure equal to or greater in value than the building razed. Landlord shall cooperate with Tenant in securing building, sign and other permits or authorizations required by appropriate authorities for any work permitted hereunder by Tenant. Any costs connected with filing applications for such permits shall be borne by Tenant. In the event Tenant constructs any such additions or new construction, the number of parking spaces required pursuant to Article 9 hereof shall be reduced by the number of spaces covered by such additions or new structures.

Utilities

16. 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, if available, water, sewage, telephone, electricity, etc.) furnished to the demised premises during the lease term.

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

Governmental
Regulations

17. 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.

Exculpation

18. Anything to the contrary in this lease notwithstanding the covenants contained in this lease to be performed by Landlord shall not be binding personally, or upon any partner, employee or agent of the Landlord 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 7 of this lease shall be personally binding upon Landlord.

Damage to
Demised
Premises

19. From and after the "date of occupancy by Tenant," as that term is defined in Article 10 hereof, should Tenant's net worth at any time be less than One Hundred Million Dollars (\$100,000,000.00), upon written request of the Landlord or mortgagee, Tenant shall procure fire insurance with extended coverage endorsement upon the building erected by Landlord pursuant to Article 5 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 Kmart's 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

20. 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 rental and other charges shall abate during the period of demolition and restoration, and thereafter the annual rental 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 Parcel A of Exhibit "A" shall be expropriated by public or quasi-public authority, Landlord shall make every effort to substitute equivalent and similarly improved lands contiguous to and properly integrated with the remainder of the site depicted on Exhibit "B". If Landlord shall be unable to substitute such lands and if one or more expropriations shall in total deprive Tenant of the use of more than ten percent (10%) of the land described in Parcel A of Exhibit "A", then, in such event, the Tenant shall have the option to terminate this lease at any time within twelve (12) months after such deprivation becomes effective by giving notice to Landlord.

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

Use, Assign-
ment and
Subletting

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

Notwithstanding the foregoing, Tenant agrees with Landlord that any premises located within the shopping center as depicted on Exhibit "B" including the demised premises shall not be used as a discotheque, dance hall, night club, movie theatre, bowling alley, health club or office building. The shopping center premises shall not be used for a movie theater, bowling alley, drive-up photography kiosk and in no event shall the demised premises be used for the sale, distribution or display of: any paraphernalia commonly used in use or ingestion of illicit drug or any X-rated, pornographic, elude, or so called "adult" newspaper, book, magazines, film, picture, video tape, video disc or other similar representation or merchandise of any kind, and no so called "penny arcade", "video game room", or "amusement center" featuring electronic video games, pinball machines, slot machines or other similar coin operated devices be permitted. Furthermore, Tenant agrees that so long as Bi-Lo, Inc. or its affiliates, or another supermarket chain of like quality and reputation operating at least 20 stores is operating a supermarket or grocery store on the property described in Exhibit "A" Parcel B, Tenant agrees that no part of the demised premises, being Parcel A of Exhibit "A", shall be used by Kmart Corporation, its successors, assigns, representatives, or heirs for the sale of grocery, meat, produce, dairy, bakery products, pharmaceutical supplies, prescription drugs and medicines, or any of them. Notwithstanding anything herein to the contrary, Kmart Corporation, its successors, assigns, representatives, or heirs may:

- (1) operate a pharmacy and, as a part of such pharmacy or independently thereof, engage in the sale of pharmaceutical supplies, prescription drugs and medicines on its leased premises in the Shopping Center;
- (2) engage in the sale of grocery, meat, produce, dairy and bakery products for on or off-premises consumption in an area not to exceed five thousand (5,000) square feet exclusive of aisle space on its leased premises in the Shopping Center in a manner which is incidental to its general retail business; and
- (3) engage in the operation of a deli, lunch counter, cafeteria or similar facility in which Kmart sells food and beverage which may be consumed on or off its premises.

Notwithstanding the foregoing, the restrictions herein shall be void in the event:

- (1) Bi-Lo, Inc. Supermarket, its affiliates, or another supermarket shall of like quality and reputation operating at least 20 stores ceases to be that tenant of the building designated on Exhibit "B" as "Bi-Lo" or
- (2) Bi-Lo, Inc. Supermarket, its affiliates, or another supermarket shall of like quality and reputation operating at least 20 stores fails to operate a supermarket for a period of 180 days in the building designated on Exhibit "B" as "Bi-Lo, Inc." except for nonoperation due to fire and casualty for a period not to exceed one year.

Signs

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

Subject to compliance by Tenant with applicable law, Tenant shall have the option to erect at its sole cost and expense upon any portion of the demised premises (except for the roof) 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.

Prior to the date of occupancy by Tenant as defined in Article 11 hereof, Landlord shall, subject to Tenant's approval and applicable governmental laws, statutes and ordinances, at Landlord's sole cost and expense, install one (1) shopping center pylon sign at the location designated as "Shopping Center Pylon" on Exhibit "B", attached hereto and made a part hereof. Such pylon sign shall be designed to permit the installation of other identification signs on same and Tenant shall have the right to install or have installed its identification sign on such pylon. In the event Tenant shall elect to install or have installed its identification sign on said pylon, Tenant shall reimburse Landlord for a portion of the cost of installing said shopping center pylon; Tenant's portion of said cost to be equal to the cost of said installation multiplied by a fraction, the numerator of which shall be the number (1) one and the denominator of which shall be the total number of identification signs installed or to be installed on said pylon, including the shopping center sign. Landlord agrees that it will not allow the placement of other identification signs (other than the shopping center identification sign) on the shopping center pylon that shall be larger than the identification sign permitted to be placed on the shopping center pylon by Tenant and that Tenant's identification sign shall not be subordinate to the identification sign or signs of any Landlord's other tenants permitted to install identification signs on said pylon. Landlord further agrees that, except for the shopping center identification sign, no identification sign other than that of a tenant of the shopping center shall be placed on said shopping center pylon and that no tenant occupying a building of less than five thousand (5,000) square feet shall be permitted to place an identification sign on said shopping center pylon. After the payment to Landlord of Tenant's proportionate share of said pylon sign, no additional

tenant shall be permitted to place its name identification plate on the shopping center pylon without the written consent of Tenant, such consent shall not be unreasonably withheld.

Landlord warrants that, except for the one (1) said Shopping Center Pylon and one outparcel pylon, no additional pylon type signs shall be permitted on any portion of the shopping center premises located within the land described in Exhibit "A":

Ingress and Egress

23. 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 closings or relocations necessitated by public authority or other circumstances beyond Landlord's control.

Landlord's Remedies

24. If Tenant shall be in default under any provision of this lease and shall remain so for a period of ten (10) days after notice with respect to a monetary default and thirty (30) days with respect to a non-monetary default after notice to Tenant of such default, then Landlord may, by giving notice to Tenant at any time thereafter during the continuance of such default, either (a) terminate this lease, or (b) re-enter the demised premises by summary proceedings or otherwise, expel Tenant and remove all property therefrom, relet said premises at the best possible rent readily obtainable (making reasonable efforts therefor), and receive the rent therefrom; provided, however, Tenant shall remain liable for the equivalent of the amount of all rent reserved herein less the avails of reletting, if any, after deducting therefrom the reasonable cost of obtaining possession of said premises and of any repairs and alterations necessary to prepare it for reletting. Any and all monthly deficiencies so payable by Tenant shall be paid monthly on the date herein provided for the payment of rent. If any default by Tenant (except nonpayment of rent or any other monetary default) 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 as long as Tenant is diligently and in good faith pursuing a cure 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

25. 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

26. Landlord covenants, represents and warrants that it has full right and power to execute and perform this lease and to grant the estate demised herein and that Tenant, on payment of the rent and performance of the covenants and agreements hereof, shall peaceably and quietly have, hold and enjoy the demised premises and all rights, easements, appurtenances and privileges belonging or in anywise appertaining thereto during the lease term without molestation or hindrance of any person whomsoever, and if at any time during the term hereby demised the title of Landlord shall fail or it be discovered that its title shall not enable Landlord to grant the term hereby demised, Tenant shall have the option at Landlord's expense to correct such defect or to annul and void this lease with full reservation of its right to damages, if any.

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

- (a) Public utility easements not impairing Tenant's use of the demised premises.
- (b) Any easements that must be granted and are required by the State of North Carolina as a condition for the installation of a traffic light for the property as noted on Exhibit "B".

Landlord shall, without expense to Tenant and within thirty (30) days after written request by Tenant, furnish (a) an ALTA leasehold policy of Title Insurance in form acceptable to Tenant in an amount not less than One Million Dollars (\$1,000,000.00) showing that Landlord's title is as herein represented, (b) an as-built survey by a licensed surveyor of the land described in Parcel A of Exhibit "A", and (c) agreements wherein each holder of any lien against the demised premises shall consent to this lease and warrant that Tenant's possession and right of use under this lease in and to the demised premises shall not be disturbed by such holder unless and until Tenant shall breach any of the provisions hereof and this lease or Tenant's right to possession hereunder shall have been terminated in accordance with the provisions of this lease.

Mortgage
Subor-
dination

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

Tenant
Indemnifies
Landlord

28. During the lease term Tenant shall indemnify and save Landlord harmless against all penalties, 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.

Tenant's
Right to
Cure
Landlord's
Defaults

29. In the event Landlord shall fail to perform any obligation specified in this lease, then Tenant may, after the continuance of any such default for fourteen (14) days after notice thereof by Tenant, 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 lower rate of twelve percent (12%) per annum or the highest rate not prohibited by law, and Tenant may to the extent necessary withhold any and all rental payments and other payments thereafter due to Landlord and apply the same to the payment of such indebtedness.

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

30. 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 for which Landlord has received the required payments under the lease. 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 and shall be removed by Tenant or such other occupant at the expiration or earlier termination of the Lease.

Holding Over

31. 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

32. Landlord hereby agrees to elect under the applicable provisions of the Internal Revenue Code, as amended, (hereinafter referred to as the "Code") to pass through to the Tenant to the extent it is unavailable to Landlord, all investment tax credit which may be available from time to time in respect of the demised premises under said Code. Landlord agrees to timely execute all documents required by said Code, and regulations issued thereunder, to enable Tenant to obtain such investment tax credit. To the extent that Tenant is able to obtain an investment tax credit, it shall be the Tenant's responsibility for determining compliance with Internal Revenue Code.

Notices

33. 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 or by a nationally recognized overnight air courier to Landlord at the last address where rent was paid or to Tenant at its principal office in Troy, Michigan, Attention: Vice President Corporate Facilities 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 or such overnight air courier service.

Captions and Definitions

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

Successors and Assigns

35. 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.

Severability

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

Choice of Law

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

Waiver and Modifications

38. The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the agreements, terms, covenants, conditions or obligations of this lease, or to exercise any right,

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

Memorandum
of Lease

39. 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.

Hazardous
Waste

40. Landlord represents that it has made a thorough investigation of the physical condition of the Demised Premises, that it is fully familiar with the present and prior uses of the Demised Premises and that to the best of its knowledge there are not now nor have there been any toxic or hazardous wastes or substances, (as defined below) wastes or substances used, generated, stored, treated or disposed on the Demised Premises except for those substances that any have been used, generated, stored, treated or disposed by the Kmart Corporation. Landlord hereby indemnifies Tenant from and against any loss, liability, claim or expense, including, without limitation, cleanup, engineering and attorneys fees and expenses that Tenant may incur by reason of the above representation being false or by reason of any investigation or claim of any governmental agency in connection therewith (excluding matters resulting from Tenant's use and occupancy of the demised premises and further excluding the matters resulting from Kmart Corporation's activities as described above). Landlord's representations and indemnity to Tenant under this paragraph shall survive the cancellation or termination of this lease.

At any time from the date of this Lease until Commencement Date, Tenant (or Tenant's contractor) may inspect the Demised Premises for the presence of such wastes or substances. If toxic or hazardous wastes or substances are discovered in the Demised Premises other than those whose presence are as a result of the activities of Kmart as described above, Tenant may cancel this Lease by giving notice to Landlord and returning possession of the premises to the Landlord prior to the Commencement Date, if Tenant has taken possession.

Tenant agrees that it will not store or dispose of hazardous materials in or about the Demised premises, for purposes of this Lease, "hazardous materials" includes any hazardous, toxic, or dangerous waste, substance or material defined as such in (or purposes of) the Comprehensive Environmental Response, Compensation and Liability Act, and so called "superfund" or "superlien" law, or any other federal, state or local statute, law ordinance, code, rule, regulation, consent agreement or other requirement of any governmental authority regulating, relating to, or imposing liability or standards of conduct concerning any hazardous or toxic or dangerous waste. Tenant shall defend, indemnify and save Landlord harmless from all costs and expenses (including consequential damages) asserted or proven against Landlord by any party as a result of Tenant's use, storage or disposal of hazardous materials (as defined above) on or about the Demised Premises. The foregoing indemnity shall be a resource obligation of Tenant which shall survive termination or expiration of the Lease. In the event that any activity of the termination or expiration of the Lease. In the event that any activity of the Tenant causes an increase in the insurance rate on the building containing the Demised Premises as a whole, the Tenant shall pay this additional costs of insurance as assessed by Landlord's insurer, which determinations shall be conclusive and binding upon Tenant.

Property
Appraisals

41. It is understood that, if in conjunction with securing its construction financing, Landlord shall obtain an M.A.I. appraisal on the Kmart store and/or the shopping center of which the Kmart store is a part, Landlord covenants that it shall, prior to commencement of the lease term, at no cost to Tenant, provide Tenant with a complete and certified copy of said M.A.I. appraisal.

Landlord and Tenant agree that it would be impractical and difficult to determine Tenant's damages in the event Landlord failed to provide a copy of said appraisal. As a consequence, in the event Landlord fails to provide said M.A.I. appraisal, Tenant may upon thirty (30) days written notice to Landlord, make a one time charge to Landlord of Twenty-Five Thousand and No/100 (\$25,000.00) Dollars, which amount Tenant may subtract from rents due and payable under the Lease. Landlord and Tenant agree that said \$25,000 shall be deemed liquidated and fixed damages for Landlord's default with respect to the M.A.I. appraisal.

Further, it is understood that in conjunction with securing its permanent financing, Landlord may obtain an additional appraisal on the Kmart store and/or the shopping center of which the Kmart store is a part. Landlord covenants that, in the event it obtains such an appraisal, it shall provide Tenant with a complete and certified copy of said appraisal, at no cost to Tenant, immediately upon receipt of same by Landlord. Notwithstanding anything to the contrary in this Lease, Landlord understands and agrees that should Landlord fail to provide said appraisal, Tenant may refuse to provide any requested estoppel letters or subordination agreements with respect to the demised premises.

Restrictions 42. Tenant acknowledges and agrees that Landlord may sell or lease the
On outparcel as shown on Exhibit "B" as Outparcel No. 1. This Outparcel shall
Outlots shall contain a single building and the following restrictions shall be
 recorded and enforced by Landlord, its successors, assigns, representatives
 and heirs:

(a) Outparcel No. 1 shall be limited to a one story building, not to exceed 25 feet in height and 5,000 square feet of total building area.

It is further agreed between Landlord and Tenant that any pylon sign located on, or for the benefit of any outparcel user, shall be subject to Tenant's approval, and further that Tenant shall not unreasonably withhold its approval, provided in no event shall said outparcel sign be larger in height than the Kmart pylon sign, impair the visibility of the Kmart pylon sign or the Kmart building, or result in a reduction in the size of the Kmart pylon sign due to governmental restrictions.

Estoppel 43. Tenant agrees to comply with Landlord's reasonable, periodic
Certificates requests for estoppel certificates or letter certifying that Tenant is in
 possession of the premises, the date the Lease commenced, the date the primary
 lease term expires and the rents payable hereunder, in the format attached
 hereto as Exhibit "E".

SIGNATURE PAGE TO FOLLOW:

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

LANDLORD: Lenoir Realty Associates Limited Partnership
WITNESSES:

~~LANDLORD: Three L. Associates,
a Connecticut Limited
Partnership~~

BY: Three L. Commercial
Associates Limited
Partnership

BY: Konover Management
Corporation

By: Fred P. Steinmark
Fred P. Steinmark
Vice President

[Signature]

Donna J. Bryson
DONNA J. BRYSON

Attest: Maria S. Gungleton
Assistant Secretary

KMART CORPORATION

Christine Hampton

By: M. C. Ac
Senior Vice President

Nanette Zakauski

Attest: J. H. Burdick II
Assistant Secretary

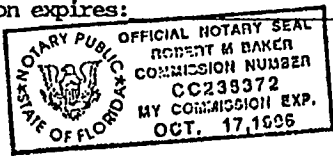
ACKNOWLEDGMENTS

STATE OF FLORIDA)
COUNTY OF PALM BEACH) SS:

I do hereby certify that on this 2 day of MARCH, 1993, before me, ROBERT M BAKER, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared FRED P. STURMACK and MARIA S. BRYANFESTER, known to me to be the President and Secretary of KNOXON MANAGEMENT CORP, who, being by me duly sworn, did depose and say that they reside in, Asst. respectively; that they are the President and Secretary respectively of Vice, the corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its and their free and voluntary act; and that they signed their names thereto by like order.

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

My commission expires:



[Signature]
Notary Public

STATE OF MICHIGAN)
COUNTY OF OAKLAND) SS:

I do hereby certify that on this 8TH day of APRIL, 1993, before me, SANDRA D. SMITH, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared M.L. SKILES and D.H. DUBOICK, II, known to me to be the Vice President and Assistant Secretary of Kmart Corporation, who, being by me duly sworn, did depose and say that they reside in ROCHESTER AND BIRMINGHAM, MI respectively; that they are the Vice President and Assistant Secretary respectively of Kmart Corporation, the corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its and their free and voluntary act; and that they signed their names thereto by like order.

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

My commission expires: SANDRA D. SMITH
Notary Public, Oakland County, Michigan *[Signature]*
My Commission Expires August 17, 1996 Notary Public

Kennedy Covington
ATTORNEYS AT LAW

Alice L. French
Paralegal
919.743.7332
afrench@kennedycovington.com

March 22, 2002

Via Overnight Delivery

Trumbull Services
4 Griffin Road North
Windsor, CT 06095

RE: KMART Corporation
Northern District of Illinois, Eastern Division
Case No. 02 B 2471

Dear Sir or Madam:

I have enclosed a copy a Proof of Claim for KPT Properties, L.P. in the above-captioned case. Upon filing, please return a file-stamped copy in the enclosed envelope.

Sincerely,



Alice L. French, Paralegal
For the Firm

cc: Margaret R. Westbrook, Esq. (w/o exhibits)