

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

In re  
K MART CORPORATION, et al,  
Debtors

Chapter 11  
Case No. 02 B02474  
Jointly Administered

PROOF OF CLAIM

Name of Debtor Against Which Claim is Held  
**Kmart Corporation**

Case No. of Debtor  
**02 B 02474**

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 and address of Creditor:  
**Double V Associates L.P.  
c/o Richard D. Rudder  
Baker & McKenzie  
805 Third Avenue  
New York, NY 10022**

- 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

THIS SPACE IS FOR COURT USE ONLY

Name and addresses where notices should be sent:  
**Sanford P. Rosen & Associates, P. C.  
747 Third Avenue  
New York, NY 10017-9998**

Telephone No (212) 223-1100

Account or other number by which creditor identifies debtor

Check here if  replaces this claim  amends previously filed claim, dated \_\_\_\_\_

1. Basis for Claim

- Goods sold
- Services performed
- Money loaned
- Personal injury/wrongful death
- Taxes
- W A R N. Act claim

- Retiree benefits as defined in 11 U.S.C. § 1114(a)
- Wages, salaries, and compensation (fill out below)
- Other **Amounts due as unpaid rent as of January 22, 2002 under lease of real property, dated as of June 1, 1984, and amounts due as damages resulting from rejection of such lease.**

Your SS# \_\_\_\_\_  
Unpaid compensation for services performed from \_\_\_\_\_ to \_\_\_\_\_  
(date) (date)

2. Date debt was incurred:  
**June 1, 1984 (date of Lease Agreement)**

3. If court judgment, date obtained: N/A

4. Total Amount of Claim at Time Case Filed: **\$4,664,665.95 (\$3,676,114.56 for amounts due as unpaid rent as of January 22, 2002, plus \$988,551.39 for amounts due as damages based upon rejection of lease) See attachment hereto.**

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 of setoff)  
Brief Description of Collateral:  
 Real Estate  Motor Vehicle  
 Other \_\_\_\_\_  
Value of Collateral \$ \_\_\_\_\_  
Amount of arrearage and other charges at time case filed included in secured claim, if any \$ \_\_\_\_\_

6. Unsecured Priority Claim.

- Check this box if you have an unsecured priority claim  
Amount entitled to priority \$ \_\_\_\_\_  
Specify the priority of the claim:
- Wages, salaries, or commissions (up to \$4,300),\* 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 \$1,950\* 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 owed to 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 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment

5a. Unsecured non-priority claim \$ \_\_\_\_\_

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 documents are not available, explain. If 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.

Date  
**March 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)

**Double V Associates L.P.  
By: Double V LLC, its General Partner**

By: *Michael A. Forastiere*  
Michael A. Forastiere, a Member

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*KP 875*  
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FRUMBULL SERVICES  
COMPANY  
*3/28/02*  
2002 MAR 28 PM 1:23  
BANKRUPTCY

**ATTACHMENT TO PROOF OF CLAIM  
OF DOUBLE V ASSOCIATES L.P.**

1. On January 22, 2002 (the "**Petition Date**"), Kmart Corporation ("**Kmart**") together with certain of its affiliates filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "**Bankruptcy Code**").

2. As of the Petition Date, Kmart was, and still is, indebted to Double V Associates L.P. ("**Claimant**") in the amount of \$3,676,114.56 for amounts due under that certain lease dated as of June 1, 1984 between Kmart and Claimant (the "**Lease**") relating to Kmart's store located in Vacaville, California (denominated by Kmart as store number 7591). A copy of the Lease is attached hereto as Exhibit "A".

3. In addition, Kmart is indebted to Claimant in the amount of \$988,551.39 based upon the rejection of the Lease. Pursuant to an order of the Bankruptcy Court dated January 25, 2002, the Lease was deemed rejected effective as of the Petition Date. Claimant's calculation of its claim is set forth on Exhibit "B" annexed hereto.

4. Claimant reserves the right to amend and/or supplement this proof of claim at any time, including after any bar date, in any manner, and/or to file additional proofs of claim for any additional claim which may be based on the same or

additional documents or grounds of liability.

5. The filing of this proof of claim is not and shall not be deemed or construed as: (a) a waiver or release of Claimant's rights against any person, entity, or property, or a waiver of the right to compel Kmart to return property of Claimant currently in the possession of Kmart; (b) a consent by Claimant to the jurisdiction of this court or any other court with respect to proceedings, if any, commenced in any case against or otherwise involving Claimant; (c) a waiver or release of Claimant's right to trial by jury in this court or any other court in any proceeding as to any and all matters so triable herein; whether or not the same be designated legal or private rights or in any case, controversy, or proceeding related hereto, notwithstanding the designation or not of such matters as "core proceedings" pursuant to 28 U.S.C. § 157(b)(2), and whether such jury trial right is pursuant to statute or the United States Constitution; (d) a consent by Claimant to a jury trial in this court or any other court in any proceeding as to any and all matters so triable herein or in any case, controversy, or proceeding related hereto, pursuant to 28 U.S.C. § 157(e) or otherwise; (e) a waiver or release of Claimant's right to have any and all final orders in any and all non-core matters or proceedings entered only after *de novo* review by a United States District Court Judge; (f) a waiver of the right to

move to withdraw the reference with respect to the subject matter of this proof of claim, any objection thereto or other proceeding which may be commenced in these cases against or otherwise involving Claimant; or (g) an election of remedies.

# EXHIBIT A

RECORDING REQUESTED BY: )  
John F. Walsh, Esq. )  
)  
WHEN RECORDED, MAIL TO: )  
John F. Walsh, Esq. )  
3100 West Big Beaver Road )  
Troy, Michigan 48084 )

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Space Above for Recorder's Use

**LEASE AGREEMENT**

**Between**

**DOUBLE V ASSOCIATES L.P.**

**as Lessor**

**and**

**K MART CORPORATION**

**as Lessee**

**Dated as of June 1, 1984**

**Property located in Vacaville, California**

This Lease Agreement has been assigned as security for the performance of certain obligations, including the obligations under Lessor's Note referred to herein. To the extent, if any, that this Lease constitutes a chattel paper (as such term is defined in the Uniform Commercial Code in any applicable jurisdiction), those security interests herein may be created only through the transfer or possession of the original counterpart hereof which shall be identified by the signature of a vice president of Lessee signed in the space provided for below. The original counterpart hereof is being delivered by Lessor upon execution thereof to Teacher Retirement System of Texas.

**K MART CORPORATION**

By: \_\_\_\_\_  
Vice President

## TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
1. Definitions.....	1
2. Lease of Premises.....	3
3. Title and Condition.....	3
4. Use; Quiet Enjoyment.....	3
5. Terms.....	3
6. Rent.....	4
7. Net Lease; Non-Terminability.....	5
8. Taxes and Assessments; Compliance With Law.....	6
9. Liens.....	11
10. Indemnification.....	11
11. Maintenance and Repair.....	12
12. Alterations.....	12
13. Lessor to Grant Easements, Etc.....	12
14. Condemnation and Casualty.....	13
15. Insurance.....	16
16. Uneconomic Use.....	18
17. Procedure upon Purchase.....	18
18. Assignment and Subletting.....	19
19. Permitted Contests.....	19
20. Conditional Limitations; Default Provision.....	20
21. Additional Rights of Lessor.....	23
22. Financing of Additional Improvements.....	24
23. Notices, Demands and Other Instruments.....	26
24. Estoppel Certificates.....	26
25. No Merger.....	26
26. Surrender.....	26
27. Separability; Binding Effect.....	26
28. Investment Tax Credit.....	27
29. Lessor's Right to Cure Lessee's Default.....	27
30. Lessor's Right to Inspect.....	28
31. Conveyance by Lessor.....	28
32. Option to Purchase at Fair Market Value.....	28
33. Appraisal to Determine Fair Market Value.....	29
34. Right to First Offer.....	30
35. Headings.....	30
36. Governing Laws.....	30
37. Memorandum of Lease.....	30
38. Exhibits.....	30
39. Completion of Improvements.....	30
40. Deferred Improvement Agreement.....	31
41. Exculpation.....	32
Exhibit A - Description of Premises; Liens and Encumbrances	
Exhibit B - Purchase Prices	
Exhibit C - Rent Schedules - Primary Term Base Rent Schedule - Extended Term Rent Schedule	
Exhibit D - Completion Certificate	

LEASE AGREEMENT, dated as of June 1, 1984 (the Lease), between DOUBLE V ASSOCIATES L.P., a Delaware limited partnership (Lessor), having an address c/o Lawrence Kadish Real Estate, 666 Old Country Road, Suite 500, Garden City, New York 11530 and K MART CORPORATION, a Michigan corporation (Lessee), having an address at 3100 West Big Beaver Road, Troy, Michigan 48084.

1. Definitions. Whenever used in this Lease, the following words and phrases shall have the following meanings:

Accumulated Reserve Fund: As defined in Section 6(d) hereof and set forth on Exhibit C hereto.

Addition Note: As defined in Section 22(a) hereof.

Addition Owner: As defined in Section 22(a) hereof.

Addition Purchase Price: As defined in Section 22(a) hereof.

Additional Rent: As defined in Section 6(b) hereof.

Additional Rental: As defined in Exhibit C hereto.

Basic Rent: As defined in Section 6(a) hereof.

Cash Payments: As set forth on Exhibit C hereof.

Casualty: As defined in Section 14 hereof.

Commencement Date: As defined in Section 5(a) hereof.

Condemnation: As defined in Section 14 hereof.

Contributions to Reserve Fund: As set forth on Exhibit C hereto.

Corrections: As defined in Section 8 hereof.

Deficiency: As defined in Section 8 hereof.

Excluded Personal Property: Any inventory, trade fixtures, machinery, equipment or other personal property, used or useful in Lessee's or any sublessee's business and owned by Lessee, any sublessee or third parties, other than permanently attached equipment or machinery constituting real estate fixtures or such equipment or machinery as is necessary to the operation of the building.

Extended Terms: As defined in Section 5(b) hereof.

Fair Market Value: As defined in Section 33 hereof.

Gross Receipts Taxes: As defined in Section 8 hereof.

Improvements: All buildings and other improvements (subject to Section 12(a) with respect to Lessee's Improvements) now or hereafter located on the land described in Exhibit A but excluding the Excluded Personal Property.



**Interim Term:** As defined in Section 5(a)(i) hereof.

**Lease:** This Lease Agreement and all amendments hereof and supplements hereto.

**Legal Requirements:** As defined in Section 8(b) hereof.

**Lessee:** K mart Corporation, a Michigan corporation.

**Lessee's Improvements:** Additional improvements constructed by Lessee which are not in substitution for or replacement of Improvements theretofore constituting property of Lessor.

**Lessor:** Double V Associates L.P., a Delaware limited partnership, its successors and assigns.

**Lessor's Note:** The Secured Promissory Note dated July \_\_, 1984 from Lessor to Teacher Retirement System of Texas, and any substitutions therefor or replacements thereof.

**Mortgage:** The mortgage, deed of trust or other instrument creating a first lien on Lessor's interest in the Premises and securing the Lessor's Note.

**Mortgagee:** The mortgagee, beneficiary or grantee under the Mortgage.

**Permitted Exceptions:** The matters set forth in Part II of Exhibit A hereto.

**Premises:** The land described in Part I of Exhibit A hereto, the Improvements, and all easements, rights and appurtenances relating thereto.

**Primary Term:** As defined in Section 5(a)(ii) hereof.

**Purchase Option:** As defined in Section 32 hereof.

**Purchase Option Date:** As defined in Section 32 hereof.

**Rent Tax Amount:** As defined in Section 8 hereof.

**Rent Taxes:** As defined in Section 8 hereof.

**State Tax:** As defined in Section 8 hereof.

**Substitute Taxes:** As defined in Section 8 hereof.

**Supplemental Term:** As defined in Section 5(b) hereof.

**Unavoidable Delay:** Delay due to strike, lockout, inability to produce materials, power failure, act of God, governmental restriction, enemy action, civil commotion, fire, unavoidable casualty or other causes beyond the control of Lessee, provided that lack of funds shall not be deemed a cause beyond the control of Lessee.

**Year:** A twelve (12) month period commencing on the Commencement Date or on an annual anniversary date thereof, as the case may be.

2. **Lease of Premises.** In consideration of the rents and covenants herein stipulated to be paid and performed by Lessee and upon the terms and conditions herein specified, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises.

3. **Title and Condition.** The Premises are leased to Lessee in their present condition without representation or warranty, express or implied, by Lessor and subject to (i) the rights of parties in possession, (ii) Permitted Exceptions, and (iii) all applicable zoning rules, restrictions, regulations, resolutions and ordinances and building restrictions and governmental regulations now or hereafter in effect. Lessee has examined the Premises and title thereto and has found the same satisfactory. Lessee is renting the Premises "as is" in its present condition and state of repair. LESSOR MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE CONDITION OF THE PREMISES OR ITS FITNESS OR AVAILABILITY FOR ANY PARTICULAR USE AND LESSOR SHALL NOT BE LIABLE FOR ANY LATENT OR PATENT DEFECT THEREIN.

4. **Use; Quiet Enjoyment.** Lessee may occupy and use the Premises for any lawful purpose. So long as no default has occurred and is continuing hereunder, Lessor covenants peaceful and quiet enjoyment of the Premises by Lessee subject to the terms and conditions of this Lease; provided that Lessor and its agents may enter upon and examine the Premises as reasonable times after giving reasonable notice.

5. **Terms.** (a) **Interim and Primary Terms.** Subject to the terms and conditions hereof, Lessee shall have and hold the Premises for:

(i) an interim term (herein called the Interim Term) commencing on the date hereof and ending at midnight on July 31, 1984..

(ii) a primary term (herein called the Primary Term) commencing on August 1, 1984 (the "Commencement Date") and ending at midnight on July 31, 2009.

(b) **Extended Terms.** Thereafter, subject to the terms and conditions hereof and if and for so long as no event of default shall have occurred hereunder and be continuing, Lessee shall have the right and option to extend this Lease as follows:

(i) for ten (10) consecutive extended terms of five (5) years each (herein called the Extended Terms) unless this Lease shall be sooner terminated pursuant to the terms hereof. Each Extended Term shall commence on the day immediately succeeding the expiration date of the next preceding term, and shall end at midnight on the day immediately preceding the fifth anniversary of the first day of such term. Lessee may exercise each such option to extend this Lease by giving written notice to Lessor at least one (1) year but not more than two (2) years prior to the end of the then term of this Lease.

(ii) regardless of the exercise or non-exercise by Lessee of any or all of the foregoing options in Section 5(b)(i) Lessee shall have,

unless this Lease shall be sooner terminated pursuant to the terms hereof or unless the last day of the term hereof 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 (the "Supplemental Term") as shall cause the last day of the term of this Lease to be 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 Lessor given not less than one (1) year but not more than two (2) years prior to the expiration of the then term of this Lease. Lessee's rental during the Supplemental Term shall be the same rental payable under this Lease at the time Lessee notifies Lessor of its intention to exercise this option; provided, however, if Lessee shall exercise this option such that the Supplemental Term shall immediately follow the expiration of the Primary Term, the rental during the Supplemental Term shall be prorated based on the annual rental payable during the first six (6) Extended Terms as set forth in paragraph A of Exhibit C hereto.

In the case of any of the options set forth in this Section 5(b) above, the giving of notice shall automatically extend this Lease for an Extended Term and no instrument of renewal need be executed, provided that no Extended Term shall take effect unless this Lease is in full force and effect immediately prior to the commencement thereof. If Lessee fails to give the required notice, this Lease shall automatically terminate at the end of the then term of this Lease and Lessee shall have no further option to extend this Lease. If Lessee does not exercise any such option in a timely manner, then Lessor shall have the right during the remainder of the term of this Lease to advertise the availability of the Premises for sale or reletting and to erect upon the Premises signs indicating such availability; provided, that such signs do not unreasonably interfere with the use of the Premises by Lessee. The phrase "term of this Lease" or "term hereof" means the Interim Term and Primary Term, plus any Extended Terms with respect to which the right to extend has been exercised.

6. Rent. (a) Basic Rent. Lessee shall pay to Lessor by check in lawful money of the United States, at Lessor's address set forth above, or at such other address or to such other person as Lessor from time to time may designate as fixed rent for the Premises (Basic Rent) in arrears during the term of this Lease as follows:

(i) during the Interim Term, the debt service on the Lessor's Note, payable November 1, 1984;

(ii) during each year of the Primary Term, installments of Basic Rent in amounts set forth in Column #1 on Exhibit C hereto, the first such payment to be due November 1, 1984 and each subsequent payment to be due on the first day of each February, May, August and November thereafter through August 1, 2009, provided, notwithstanding the foregoing, on the date for each payment of Basic Rent the Lessee shall withhold as a reserve fund the amount specified as Contributions to Reserve Fund (Column #2) on Exhibit C. The amounts so held in such reserve fund shall be paid to Lessor at such time and in such amounts as are specified as Reserve Fund Payments (Column #4) on Exhibit C. On each Basic Rent payment date the amount of cash payments to the Lessor shall be the amount specified as Cash Payments (Column #5) on Exhibit C.

(iii) during each Year of the Extended Terms, installments in such amounts and payable on such dates as set forth in the Extended Term Rent Schedule on Exhibit C hereto.

Anything hereinabove to the contrary notwithstanding, if (v) Lessor or ~~Lawrence Kadish~~ shall not make a Rental Deficiency Deposit in accordance with the terms of that certain Rental Deficiency Agreement dated as of June 1, 1984, or (w) if such Deposit is made by Lessor or ~~Lawrence Kadish~~ and the payment of such Deposit is avoided, reduced or refunded in whole or in part as a preference by virtue of any provisions of United States federal bankruptcy, insolvency or liquidation laws, or other similar law of any governmental unit, Lessee agrees to prepay Basic Rent hereunder in an amount equal to the difference, if any, between the debt service due on the Lessor's Note for the applicable quarterly installment due thereunder and the Basic Rent otherwise due under this Lease for the corresponding date. If the Rental Deficiency Deposit is not made in accordance with subparagraph (v) above, or if such Deposit is avoided, reduced or refunded in whole or in part in accordance with subparagraph (w) above, such prepayment of Basic Rent shall be made in immediately available funds promptly upon notice thereof given to Lessee. Any failure by Lessee to make any prepayment of Basic Rent within ten (10) days of such notice shall be deemed a default in the payment of Basic Rent for all purposes set forth in this Lease. In the event Lessee shall prepay any Basic Rent pursuant to this paragraph, Lessee shall be entitled to offset the amount of any such prepayment (with interest thereon at the rate of the lesser of (x) the stated per annum rate of interest on the Lessor's Note, or (y) the maximum rate permitted by law, from the date of payment to the date of offset) from the first succeeding installments of Basic Rent to the extent, however, only of any amount by which such succeeding installments of Basic Rent shall exceed any installments of debt service on Lessor's Note Payable contemporaneously with such installment of Basic Rent.

(b) Additional Rent. All amounts which Lessee is required to pay pursuant to this Lease (other than Basic Rent, amounts payable upon purchase of the Premises and amounts payable as liquidated damages pursuant to Section 20), together with every fine, penalty, interest and cost which may be added for non-payment or late payment thereof, shall constitute additional rent (Additional Rent). If Lessee shall fail to pay any Additional Rent, Lessor shall have all rights, powers and remedies with respect thereto as are provided herein or by law in the case of non-payment of Basic Rent.

(c) Late Payment. If any installment of Basic Rent (or prepayment thereof pursuant to the preceding paragraph) shall not be paid within five (5) days after its due date, Lessee shall pay to Lessor, on demand, interest at the rate of 17 1/2% per annum compounded monthly on the amount of such installment from the due date thereof until paid. Lessee shall pay to Lessor, on demand, interest at such rate on all overdue Additional Rent paid on behalf of or by Lessor on behalf of Lessee from the date of payment on behalf of or by Lessor until repaid by Lessee. Lessee shall perform all its obligations under this Lease at its sole cost and expense, and shall pay all Basic Rent and Additional Rent when due, without notice or demand.

(d) Accumulated Reserve Fund. Upon any termination of this Lease during the Primary Term for any reason other than a termination arising out of Lessor's bankruptcy where Lessee elects to remain in possession, the

Lessee shall pay to Lessor the amount shown on Exhibit C as Accumulated Reserve Fund (Column #3) for the applicable date of termination. The Accumulated Reserve Fund shall be paid by Lessee to Lessor in the following manner (except with respect to a termination pursuant to Section 20(b) hereof): On each date after the termination date on which Basic Rent would have been due and payable to Lessor during the remainder of the Primary Term had not the Lease been terminated Lessee shall pay to Lessor an amount equal to the Accumulated Reserve Fund for the termination date multiplied by a fraction, the numerator of which is the amount specified as the Cash Payments (Column #5) on Exhibit C which would have been payable on the applicable date for payment of Basic Rent and the denominator of which is the sum of all Cash Payments which would otherwise have been payable from the first Basic Rent payment date after the termination date through the end of the Primary Term. The obligation of Lessee to pay Lessor the Accumulated Reserve Fund as provided herein shall survive the termination of this Lease, and upon Lessor's request, Lessee will, upon termination of this Lease, execute and deliver written evidence of Lessee's obligation hereunder.

7. Net Lease; Non-Terminability. (a) Net Lease. This Lease is a net lease and, except as otherwise expressly provided herein, any present or future law to the contrary notwithstanding, shall not terminate, nor shall Lessee be entitled to any abatement, reduction, set-off, counterclaim, defense or deduction with respect to any Basic Rent, Additional Rent or other sum payable hereunder, nor shall the obligations of Lessee hereunder be affected, by reason of: any damage to or destruction of the Premises; any taking of the Premises or any part thereof by condemnation or otherwise; any prohibition, limitation, restriction or prevention of Lessee's use, occupancy or enjoyment of the Premises, or any interference with such use, occupancy or enjoyment by any person; any eviction by paramount title or otherwise; any default by Lessor hereunder or under any other agreement; the impossibility or illegality of performance by Lessor, Lessee or both; any action of any governmental authority; or any other cause whether similar or dissimilar to the foregoing. It is the intention of the parties hereto that the Basic Rent, Additional Rent and any other sum payable hereunder shall be paid by Lessee as absolutely net sums, without diminution for any reason. The parties intend that the obligations of Lessee hereunder shall be separate and independent covenants and agreements and shall continue unaffected unless such obligations shall have been modified or terminated pursuant to an express provision of this Lease. Lessee shall have the right, however, by separate and independent action to pursue any claims it may have against Lessor or any assignee or successor of Lessor, subject to Section 41 hereof.

(b) Non-Terminability. Lessee shall remain obligated under this Lease in accordance with its terms and shall not take any action to terminate, rescind or avoid this Lease, notwithstanding any damage to, or condemnation of, the Premises, or the lawful or unlawful prohibition or interference with the use of the Premises, or any bankruptcy, insolvency, reorganization, liquidation, dissolution or other proceeding affecting Lessor or any assignee of Lessor or any action with respect to this Lease which may be taken by any trustee, receiver or liquidator or by any court, or any failure of Lessor to perform its covenants set forth in Section 28 hereof. Lessee waives all rights to terminate or surrender this Lease, or to any set-off, reduction, abatement or deferment of Basic Rent, Additional Rent or other sums payable hereunder, except as otherwise expressly provided herein.

8. Taxes and Assessments; Compliance With Law. (a) Taxes and Assessments. Subject to the terms of Section 19, Lessee shall: (i) pay, or cause to be paid, before any fine, penalty, interest or cost may be added for non-payment, (A) all taxes, assessments, levies, fees, water and sewer rents and charges, and all other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, which are, at any time prior to or during the term hereof, imposed or levied upon or assessed against the Premises, Lessee's Improvements or the Excluded Personal Property, (B) all sales, use and similar taxes at any time levied, assessed or payable on account of the leasing or use of the Premises and all value added taxes imposed on the acquisition, sale or other transfer by Lessee of its inventory, and (C) all charges payable for utilities serving the Premises; and (ii) reimburse Lessor, promptly upon receipt of evidence of payment thereof, for all Gross Receipts Taxes (as hereinafter defined). Lessee shall not be required to pay or reimburse Lessor for the payment of any franchise, corporate, estate, inheritance or transfer tax of Lessor or any income, revenue or profits tax of Lessor based on its general income or revenues (other than to the extent Lessee is required to reimburse Lessor for the payment of such a tax pursuant to subparagraph (ii) above), except to the extent, and only to the extent, such tax is specifically stated in the legislation or otherwise clearly demonstrated by the legislative history to be imposed, levied or assessed in substitution for, or in substitution for any increase to, any other tax, assessment, charge or levy which Lessee is required to pay or reimburse Lessor for the payment of pursuant to the preceding sentence of this Section 8(a) (hereinafter "Substitute Taxes"). Nothing in this Section 8(a) shall require Lessee to pay or reimburse Lessor for the payment of (w) any federal income tax, (x) any tax imposed upon the sale of all or a part of the Premises by Lessor, (y) any tax, assessment, charge or levy imposed or levied upon or assessed against any property of Lessor other than the Premises or any income to, or business activity of, Lessor not connected with the Premises, or (z) any tax, assessment, charge or levy imposed or levied upon or assessed against Lessor or payable by Lessor, in each case on account of and to the extent based upon or measured by Additional Rental (as defined in Exhibit C hereto). Nothing in this Section 8(a) shall require Lessee to pay or reimburse Lessor for the payment of any tax if Lessee's payment of such tax or reimbursement of Lessor for the payment of such tax would violate any applicable law.

The term "Gross Receipts Taxes" shall mean any State Tax (as hereinafter defined) levied, assessed or imposed on Lessor on account of Basic Rent or Additional Rent (including, without implied limitation, any State Tax imposed on Lessor by reason of Lessee's payment, or reimbursement of Lessor for payment, of any tax under this Section 8(a)) and any State Tax, including without implied limitation, a value added tax, to the extent measured by or based upon such rents (if in computing such taxes there is not allowable as a deduction for the taxable year substantially all of the depreciation or interest deductions allowed for federal income tax purposes for the taxable year), provided, however, Lessee's obligation with respect to the aforesaid Gross Receipts Taxes shall be limited to the amount thereof as computed at the rates that would be payable if the Premises were the only property of Lessor (provided, however, that to the extent Lessor has excess deductions or credits from other sources that may be used to reduce such Gross Receipts Taxes, such

deductions or credits shall be so used). The term "State Tax" means any tax or assessment of the state in which the Premises are located or any political subdivision thereof.

To the extent that, during the Interim Term or Primary Term only (but not including any Extended Term) of this Lease, Lessee pays any Rent Taxes (as hereinafter defined) Lessor shall pay to Lessee that portion of the aggregate amount of all such Rent Taxes paid by Lessee specified below (hereinafter referred to and defined below as the "Rent Tax Amount") on the twenty-fifth anniversary of the Commencement Date; provided, however, that the Rent Tax Amount shall only be payable hereunder if (x) Lessee shall have exercised its option to extend the term of this Lease for the first Extended Term at the end of the Primary Term, or (y) Lessee shall have exercised the Purchase Option provided in Section 32 hereof, in which latter event the Rent Tax Amount shall be deducted from the Fair Market Value determined pursuant to Section 33 hereof, except as set forth in the following paragraph.

In the event that Lessee shall have exercised its option to purchase the Premises as of the end of the Primary Term pursuant to Section 32 hereof and the difference between (i) the Fair Market Value determined pursuant to section 33 and (ii) sums payable under any Addition Notes (as defined in Section 22 hereof), is less than the Rent Tax Amount, then Lessor, on the date of purchase of the Premises by Lessee, shall, at its sole option, either pay the Rent Tax Amount to Lessee or execute and deliver its promissory note to Lessee, which note shall be in form and substance reasonably satisfactory to Lessee, in the amount of the Deficiency (as hereinafter defined). Such promissory note shall be dated on the date of delivery thereof and shall bear interest from the date thereof at the lesser of (x) the rate of 16 1/2% per annum compounded monthly, or (y) the maximum rate permitted by law and shall be without personal liability to Lessor and its partners. The principal and all interest accrued thereon shall be due and payable in full five years after the date thereof, but may be prepaid at any time without penalty or premium. The term "Deficiency" as used hereinabove shall mean the difference between (a) the Rent Tax Amount, and (b) the Fair Market Value determined pursuant to Section 33 hereof, less the sums payable under any Addition Notes (as defined in Section 22 hereof).

The term "Rent Taxes" means all (x) Gross Receipts Taxes paid by Lessee pursuant to subparagraph (a)(ii), and (y) Substitute Taxes paid by Lessee pursuant to the second sentence of the first paragraph of this Section 8, but only to the extent that such Substitute Taxes are imposed, levied or assessed in substitution for any increase to any other tax, assessment, charge or levy which Lessee is required to pay or reimburse Lessor for the payment of pursuant to the first sentence of Section 8(a).

In the event that Lessee shall have exercised its option to extend the term of this Lease for one or more Extended Terms, then the Rent Tax Amount shall be payable as follows:

(a) the Rent Tax Amount shall be credited by Lessee to the payment of Basic Rent payable during the first Extended Term, provided that the amount which may be credited in any one Year shall not exceed \$18,500; and,

(b) the balance of any Rent Tax Amount remaining after application of the credit provided in (a) above shall be due and payable on the last day of the first Extended Term, provided, however, that if Lessor shall certify in writing to Lessee that it has been unable to finance (by sale or otherwise) the payment of the balance of the Rent Tax Amount, then Lessor shall on the last day of the first Extended Term execute and deliver its promissory note to Lessee on the same terms and conditions as the promissory note described in the fourth paragraph of this Section 8(a) except that the principal amount thereof shall be the balance of the Rent Tax Amount then owing and that such note shall be secured by a deed of trust or mortgage on the Premises in form and substance reasonably satisfactory to Lessee and shall be without personal liability to Lessor and its partners.

The term "Rent Tax Amount" shall equal the aggregate amount of all Rent Taxes paid by Lessee during the Interim Term and Primary Term only (but not during any Extended Term) of this Lease, provided, however, that the aggregate amount thereof shall not exceed the following:

(a) if the Rent Tax Amount is payable by Lessor by reason of the exercise by Lessee of its option to extend the term of this Lease, 20% of the fair market value of the Premises on the last day of the Primary Term, as encumbered by the Lease; or

(b) if the Rent Tax Amount is payable by Lessor by reason of the exercise by Lessee of its option to purchase the Premises as of the end of the Primary Term pursuant to Section 32 hereof, 20% of the Fair Market Value as determined pursuant to Section 33 hereof.

If the Lessor and Lessee are unable to agree on the fair market value for purposes of subparagraph (a) of this paragraph, then it shall be determined in the same manner as provided for the determination of Fair Market Value in Section 33 hereof.

Anything hereinabove to the contrary notwithstanding, if at any time and from time to time during the Primary Term of this Lease, Lessor shall sell or convey all or any part of its interest in the Premises to a third party, then the amount of any Rent Taxes paid by Lessee hereunder to the date of such sale or conveyance shall be forthwith due and payable to lessee, provided, however, that the foregoing provision shall not apply to a sale pursuant to foreclosure of the Mortgage or in lieu thereof (but shall apply to any subsequent sale or conveyance of the premises), and provided further, however, that the amount of such Rent Taxes then due and payable shall not exceed 20% of the fair market value of the Premises or portion thereof sold or conveyed at the date of such sale or conveyance, as encumbered by the Lease. If the Lessor and Lessee are unable to agree on the fair market value, it shall be determined in the same manner as provided for the determination of Fair Market Value in Section 33 hereof. Any Rent Taxes in excess of the amount for which Lessee receives reimbursement under this paragraph and any Rent Taxes which Lessee is thereafter required to pay shall be treated as Rent Taxes under this Section 8(a) and Lessee shall be entitled to reimbursement for such Rent Taxes in accordance with this Section 8(a).



Except in connection with the payment of Rent Taxes upon sale or conveyance as described in the immediately preceding paragraph of this Section 8(a), no Rent Taxes shall be paid or credited to Lessee prior to the payment in full of all sums payable under the Lessor's Note.

Lessee will furnish to Lessor, promptly after written demand therefor, proof of payment of all items referred to above which are payable by Lessee. If any assessment may legally be paid in installments, Lessee may pay such assessment in installments; in such event, Lessee shall be liable only for installments which become due and payable prior to or during the term hereof. To the extent Lessee is responsible to reimburse Lessor for the payment of any Gross Receipts Tax or Substitute Tax, Lessor shall prepare at Lessor's expense the required tax return and deliver a copy of same to Lessee for approval (which approval shall not be unreasonably withheld) at least thirty (30) days prior to the due date for the payment of such tax, provided, however, that pursuant to a written request of Lessor or its accountants not less than sixty (60) days prior to the date on which such tax is due, Lessee, not less than forty (40) days prior to the date on which such tax is due, shall provide Lessor with any information which is in Lessee's possession or control and otherwise unavailable to Lessor which is required for completion of such tax return. If Lessee does not notify Lessor of its approval or disapproval of such tax return at least fifteen (15) days prior to the due date for payment of such tax, such return shall be deemed approved hereunder. If Lessee notifies Lessor of its disapproval of such return (which disapproval shall contain an explanation of the reasons therefor and a statement of the necessary changes and corrections (hereinafter the "Corrections") to be made), such return shall be revised accordingly and forthwith resubmitted to Lessee for approval at least seven (7) days prior to the payment date. Lessee shall, at least three (3) days prior to the payment date, approve such revised return so long as it is consistent with the Corrections requested by Lessee. If Lessee does not notify Lessor of its approval or disapproval at least three (3) days prior to the payment date, such return shall be deemed approved hereunder. Following approval of such return hereunder, Lessee shall prior to the payment date pay to Lessor the portion of the tax for which Lessee is responsible hereunder in reimbursement for Lessor's payment thereof. Alternatively, Lessee may, at its option, pay such portion of the tax by delivery to Lessor prior to the payment date of a check payable to the appropriate taxing authority in such amount. If Lessee shall fail to make such reimbursement payment to Lessor prior to the payment date, Lessee shall be liable for all fines, penalties, late charges, interest and costs which may be added by such taxing authority for non-payment or late payment, it being acknowledged by the parties that Lessee's reimbursement payment is essential in order to enable Lessor to pay such tax. In the event any tax return filed by Lessor in connection with the foregoing is audited by the applicable taxing authority, then, in that event (a) Lessor will afford Lessee (at Lessee's expense) the opportunity to participate with Lessor in any audit proceedings and (b) subject to the provisions of Section 19 hereof, Lessee shall pay to Lessor any additional amount determined to be owing by such taxing authority at least five days prior to the due date for payment thereof. Lessor will furnish to Lessee promptly upon request such information as may be required by Lessee to verify the accuracy of the tax return. Lessor and Lessee otherwise agree to cooperate with one another in supplying information necessary to

determine, and in determining, the responsibility for the payment of taxes hereunder. Except to the extent that disclosure shall be required for any bona fide sale or mortgage of the Premises or for legal proceedings in any court, at law or in equity, Lessor shall hold in confidence sales figures and other information obtained from Lessee's records. Lessee shall be entitled to the benefit of any credit or deduction which reduces any tax required hereunder to be paid or reimbursed by Lessee. Lessor agrees that, to the extent permissible, it will assert all deductions and credits which will result in the greatest reduction in the amount of, and deferral of payment of, such taxes.

Failure of the Lessor to perform any of its obligations pursuant to this Section 8(a) shall in no way affect Lessee's obligations pursuant to this Lease, including, without limitation, Lessee's obligations pursuant to Section 6 hereof.

(b) Compliance with Legal Requirements. Subject to the terms of Section 19, Lessee shall comply with and cause the Premises to comply with (i) any law, statute, ordinance, regulation, order, rule, decree or similar requirement of the United States of America, the State in which the Premises are located or any political subdivision thereof applicable to the Premises or the use thereof and (ii) all contracts (including insurance policies), agreements and restrictions applicable to the Premises or the ownership, occupancy or use thereof, including but not limited to all such legal requirements, contracts, agreements and restrictions which require structural, unforeseen or extraordinary changes to the Improvements (collectively "Legal Requirements").

9. Liens. Subject to the terms of Section 19, Lessee will promptly remove and discharge, at its expense, any charge, lien, security interest or encumbrance upon the Premises or any Basic Rent, Additional Rent or other sum payable hereunder which arises for any reason, including all liens which arise out of the use, occupancy, construction, repair or rebuilding of the Premises or by reason of labor or materials furnished or claimed to have been furnished to Lessee or for the Premises, but not including: (i) the Permitted Exceptions; (ii) any deed to secure debt, mortgage, charge, lien, security interest or encumbrance created by Lessor or any successor of Lessor; (iii) easements granted pursuant to Section 13; (iv) liens for those taxes of Lessor which Lessee is not required to pay hereunder; (v) liens for taxes and assessments not yet payable by Lessee pursuant to Section 8(a) above, and (vi) subleases permitted under Section 18 hereof.

10. Indemnification. Lessee agrees that it will defend, indemnify and save Lessor and the Mortgagee harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from injury to persons or property on the Premises, or upon the adjoining streets and sidewalks or arising from the occupation, use, possession, conduct or management of the Premises. Lessee further agrees to defend, indemnify and save Lessor and Mortgagee harmless from any and all liability arising from any failure by Lessee to perform any any of the agreements, terms, covenants or conditions of this Lease on Lessee's part to be performed. Nothing herein shall be construed as indemnifying Lessor and Mortgagee against their own negligent acts or willful misconduct.

11. Maintenance and Repair. Lessee will, at its expense, maintain the Premises in good repair and condition, except for ordinary wear and tear, and will make all structural and non-structural, interior and exterior, foreseen and unforeseen and ordinary and extraordinary changes, replacements and repairs which may be required to keep the Premises in such good repair and condition, all of which shall be of quality at least equivalent to the original. Lessor shall not be required to maintain, repair or rebuild the Improvements or to maintain the Premises, and Lessee waives the right to make repairs at the expense of Lessor pursuant to any law at any time in effect.

12. Alterations. (a) In General. Lessee may, at its expense, make additions to and alterations of the Improvements, construct additional Improvements and make substitutions and replacements for the Improvements, provided that (i) the market value of the Premises shall not be lessened thereby, (ii) such work shall be expeditiously performed and completed in a good and workmanlike manner and in compliance with Sections 8(b) and 9 and all other applicable Legal Requirements, and (iii) no Improvements shall be demolished unless Lessee shall have first furnished Lessor with such surety bonds or other security acceptable to Lessor as shall be necessary to assure rebuilding of such Improvements; provided, however, that no such security shall be required so long as Lessee's tangible net worth shall exceed \$100,000,000 as determined in accordance with generally accepted accounting principles. All such additions, alterations, additional Improvements, substitutions and replacements shall be and remain part of the realty and the property of Lessor and shall be subject to this Lease; provided, however, that if Lessee's Improvements are constructed on the Premises then, until the expiration or earlier termination of the term of this Lease or such earlier date as Lessor shall reimburse Lessee for the cost of such Lessee's Improvements in accordance with Section 22, (x) title to such Lessee's Improvements shall remain in Lessee, (y) Lessee shall be entitled to all federal and state income tax deductions for depreciation with respect to such Lessee's Improvements, and (z) Lessee shall be entitled to remove such Lessee's Improvements from the Premises, provided, however, that Lessee shall repair any damage caused by such removal. Notwithstanding the provisions of the first proviso of the foregoing sentence, except as set forth in subparts (x), (y) and (z) thereof, until the expiration or earlier termination of this Lease such Lessee's Improvements shall be deemed to be included within the definition of the term "Premises" for purposes of this Lease. Prior to commencing any work contemplated by this Section 12(a) the cost of which is expected to equal or exceed \$1,000,000, Lessee shall give Lessor notice thereof and, upon Lessor's request, provide Lessor with copies of the plans and specifications with respect thereto.

(b) Excluded Personal Property. Subject to compliance with Section 8(b), Lessee may place upon the Premises any Excluded Personal Property and may remove the Excluded Personal Property at any time during the term of this Lease or within thirty (30) days after the expiration or earlier termination of such term. Lessee shall repair any damage to the Premises caused by such removal.

13. Lessor to Grant Easements, Etc. Lessor will, from time to time, at the request of Lessee and at Lessee's cost and expense, and Lessor does hereby irrevocably appoint Lessee the attorney-in-fact of Lessor during the

term of this Lease, subject to the proviso contained in this sentence and the provisions of the succeeding sentence, to (i) grant easements and other rights in the nature of easements, (ii) release existing easements or other rights in the nature of easements which are for the benefit of the Premises, (iii) dedicate or transfer unimproved portions of the Premises for road, highway or other public purposes, (iv) execute petitions to have the Premises annexed to any municipal corporation or utility district, (v) execute amendments to any covenants and restrictions affecting the Premises, (vi) execute such instruments as are necessary to subdivide or plat the Premises, and (vii) execute and deliver to any person any instrument appropriate to confirm or effect such grants, releases, dedications and transfers (to the extent of its interests in the Premises), provided, however, that the rights granted to Lessee pursuant to the provisions of this paragraph are subject to the prior delivery to Lessor of (x) a certificate of Lessee stating that such grant, release, dedication, transfer, petition or amendment is not detrimental to the proper conduct of the business of Lessee on the Premises, the consideration, if any, being paid for such grant, release, dedication, transfer, petition or amendment, and that such grant, release, dedication, transfer, petition or amendment does not materially impair the use of the Premises or materially reduce their value, and (y) duly authorized and binding undertakings of Lessee that it will remain obligated hereunder to the same extent as if such grant, release, dedication, transfer, petition or amendment had not been made (including, without limitation, the obligation to pay all Basic Rent in accordance with the terms hereof), and that Lessee will perform all obligations of Lessor under such instrument. In the case of those grants, releases, dedications, transfers, or amendments referred to in subparagraphs (i), (iii) and (v) of the preceding sentence, the prior written approval of Lessor shall be required (which approval shall not be unreasonably withheld or delayed), provided if Lessee requests such approval in writing and Lessor has not approved or disapproved the same within fifteen (15) days of such request, it shall be deemed approved, and provided further, if such grants, releases, dedications, transfers or amendments do not extend beyond the expiration or earlier termination of this Lease, the approval of Lessor shall not be required. The consideration, if any, received by Lessor or Lessee for such grant, release, dedication, transfer, petition or amendment shall be applied pursuant to Section 14(d), as if such consideration were Net Proceeds from an event of Condemnation.

14. Condemnation and Casualty. (a) Awards. Lessor shall be entitled to any award, compensation or insurance payment to which Lessor or Lessee may become entitled by reason of their interests in the Premises (i) if the Premises are damaged or destroyed by fire or other casualty (Casualty) or (ii) if the use, occupancy or title of the Premises or any part thereof is taken, requisitioned or sold in, by or on account of any actual or threatened eminent domain proceeding or other action by any person having the power of eminent domain (Condemnation); provided, however, that if no event of default shall have occurred hereunder and be continuing, Lessor shall pay over to Lessee or Lessee may retain, as the case may be, such award, compensation or insurance payment to be applied as provided in accordance with this Section 14; provided further, however, if an event of default shall have occurred hereunder and be continuing, Lessor shall be entitled to retain such award, compensation or insurance payment. If a Casualty or Condemnation shall occur at any time during the term of this Lease and the apparent damage resulting

therefrom shall equal or exceed \$100,000.00, Lessee shall give written notice thereof to Lessor and Mortgagee promptly following the occurrence thereof. Lessee is hereby authorized and empowered in the name and on behalf of Lessor and hereby agrees to appear in any such proceeding or action, to negotiate, prosecute and adjust any claim for any award, compensation or insurance payment on account of any such damage, destruction, taking, requisition or sale, and to collect and retain in accordance with the terms hereof any such award, compensation or insurance payment. Lessor shall be entitled to participate in any such proceeding, action, negotiation, prosecution or adjustment. All amounts paid in connection with any such damage, destruction, taking, requisition or sale shall be applied pursuant to this Section 14, and all such amounts (minus the expense of collecting such amounts) are herein called the Net Proceeds. Lessee shall take all appropriate action in connection with each such proceeding, action, negotiation, prosecution and adjustment and shall pay all expenses thereof, including the cost of Lessor's (and any Mortgagee's) participation therein (including their reasonable attorneys' fees and expenses).

(b) Condemnation or Damage during Interim or Primary Term. If there shall occur during the Interim or Primary Term: (i) a Condemnation of all of the Premises; or (ii) any material damage to or destruction of the Premises or a Condemnation of less than all of the Premises which, in either case, in the good faith judgment of the Board of Directors of Lessee, as reflected in a certificate signed by a Vice President or the Treasurer of Lessee, renders continued occupancy or use of the remainder of the Premises economically unsound, then Lessee shall, not later than 180 days after such occurrence, deliver to Lessor (a) notice of its intention to terminate this Lease on the next date for payment of quarterly installments of Basic Rent pursuant to Section 6(a)(ii) (the Termination Date) which occurs not less than 210 days after the delivery of such notice and (b) the certificate referred to above. Such notice shall be accompanied by an irrevocable offer by Lessee to purchase any remaining portion of the Premises and the Net Proceeds, if any, payable in connection with such occurrence (or the right to receive the same when paid, if payment thereof has not yet been made) on the Termination Date, at a price determined in accordance with Exhibit B. If Lessor shall reject such offer by notice given to Lessee not later than the 30th day prior to the Termination Date, this Lease shall terminate on the Termination Date except with respect to obligations and liabilities of Lessee hereunder, actual or contingent, which have arisen on or prior to the Termination Date, upon payment by Lessee of all Basic Rent, Additional Rent and other sums then due and payable hereunder to and including the Termination Date, and the Net Proceeds (or the right to collect and receive the same when paid, if payment thereof has not yet been made) shall belong to Lessor. Unless Lessor shall have rejected such offer in accordance with this paragraph, Lessor shall be conclusively presumed to have accepted such offer, and, on the Termination Date, shall convey the remaining portion of the Premises, if any, to Lessee or its designee and shall assign to Lessee or its designee all its interest in the Net Proceeds, pursuant to and upon compliance with Section 17.

(c) Condemnation or Damage during Extended Term. If there shall occur during an Extended Term any material damage to or destruction of the Premises or a Condemnation of all or less than all of the Premises, then Lessee may, not later than 180 days after such occurrence, deliver to Lessor notice of its intention to terminate this Lease on the next date for payment

of quarterly installments of Basic Rent pursuant to Section 6(a)(iii) (the Termination Date) which occurs not less than ninety (90) days after the delivery of such notice. This Lease shall terminate on the Termination Date, except with respect to obligations and liabilities of Lessee hereunder, actual or contingent, which have arisen on or prior to the Termination Date, upon payment by Lessee of all Basic Rent, Additional Rent and other sums then due and payable hereunder to and including the Termination Date, and the Net Proceeds (or the right to collect and receive the same when paid, if payment thereof has not yet been made) shall belong to Lessor.

(d) Restoration. If, after an occurrence of a Casualty or Condemnation, Lessee is not required to give notice of its intention to terminate this Lease, or if Lessee elects not to give notice of its intention to terminate this Lease pursuant to subpart (b) or (c) of this Section 14, then this Lease shall continue in full effect, and Lessee shall promptly and expeditiously repair any damage to the Premises caused by such event in conformity with the requirements of Section 12 so as to restore the Premises (as nearly as practicable) to the condition and market value thereof immediately prior to such occurrence. Upon completion of the repair or restoration of the Premises, Lessee shall deliver to Lessor (i) a copy of a permanent, unconditional certificate of occupancy for the Premises and (ii) a certificate signed by a Vice President of Lessee certifying to the completion of the repair or restoration of the Premises, the payment of the cost thereof in full, and the amount of such cost. In the event of a Casualty, if the cost of such repair shall be less than the Net Proceeds and if no event of default shall have occurred hereunder and be continuing, Lessee shall be entitled to retain the balance of such Net Proceeds. In the event of a Condemnation, if the cost of such repair shall be less than the Net Proceeds and if no event of default shall have occurred hereunder and be continuing, Lessee shall retain the balance of the Net Proceeds if the same shall be \$100,000 or less, and the Basic Rent and Additional Rent and the purchase prices determined in accordance with Exhibit B shall not be affected. In the event of a Condemnation, if such balance of Net Proceeds exceeds \$100,000, Lessee shall pay such balance to Lessor on the next succeeding date for payment of quarterly installments of Basic Rent pursuant to Section 6(a)(ii) or (iii). For so long as the Mortgage remains outstanding, Lessor shall apply the full amount of such balance to reduce the outstanding principal balance of the Mortgage, and the rental due on the next succeeding date for the payment of quarterly installments of Basic Rent pursuant to section 6(a)(ii) and each such payment date thereafter during the Primary Term shall be reduced by the amount by which the installments of principal and interest of the Mortgage are reduced. The purchase prices determined in accordance with Exhibit B shall be reduced by the amount of such reduction in principal balance. Lessee shall prepare and deliver to Lessor and Mortgagee on the date of payment of such balance of Net Proceeds to Lessor a schedule setting forth the rentals due for the balance of the Primary Term and the reduced purchase prices. At the request of either Lessor or Lessee, after such payment to Lessor, the parties hereto shall enter into a lease modification agreement modifying this Lease accordingly.

In the event of any temporary requisition, this Lease shall remain in full effect for the remainder of the term hereof and Lessee shall be entitled to receive the entire Net Proceeds payable for the remainder of the term hereof by reason of such requisition, and the Lessor shall receive any proceeds allocable to any period thereafter.

If the cost of any repairs required to be made by Lessee pursuant to this Section 14(d) shall exceed the amount of such Net Proceeds, the deficiency shall be paid by Lessee.

15. Insurance. (a) Coverage. Lessee will maintain insurance on the Premises of the following character:

(i) Insurance against loss by fire, lightning and other risks from time to time included under "extended coverage" policies, including adequate explosion insurance in respect of steam or pressure boilers and similar apparatus, in amounts sufficient to prevent Lessor or Lessee from becoming a co-insurer of any partial loss but in any event in amounts not less than the greater of (A) 80% of the actual replacement value of the Improvements (exclusive of foundations, excavations and Lessee's Improvements) and (B) the outstanding principal balance of the Lessor's Note.

(ii) Comprehensive general public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Premises and adjoining streets and sidewalks, in the minimum amounts of \$1,000,000 for bodily injury or death to any one person, \$3,000,000 for any one accident, and \$1,000,000 for property damage.

(iii) Workers' compensation insurance to the extent required by the law of the State in which the Premises are located and to the extent necessary to protect Lessor and the Premises against workers' compensation claims.

(iv) At any time when Improvements or Lessee's Improvements are being constructed, altered or replaced, builder's risk insurance (in completed value non-reporting form) in an amount not less than the actual replacement value of the Improvements, exclusive of foundations and excavations.

(v) Flood insurance in an amount equal to the actual replacement value (as defined in clause (i) above) of the Premises or the maximum amount available, whichever is less, if the area in which the Premises is located has been designated by the Secretary of Housing and Urban Development as having special flood hazards, and if flood insurance is available under the National Flood Insurance Act.

(vi) Earthquake insurance in an amount not less than the greater of (A) and (B) (as defined in clause (i) above), if such insurance is generally available in the City of Vacaville, State of California.

Such insurance shall be written by companies of nationally recognized financial standing legally qualified to issue such insurance and shall name as insured parties Lessor and Lessee as their interests may appear.

In the event that Lessee shall give Lessor notice of its intention to terminate this Lease in accordance with the provisions of Section 14(b) or Section 14(c) hereinabove, the actual replacement value of the Improvements shall be determined by an independent appraiser promptly selected and paid for by Lessee and acceptable to Lessor who shall determine the replacement cost based on then current construction costs.

(b) Loss Payable. Every such policy (other than any general public liability or workers' compensation policy) shall bear a first mortgagee endorsement in favor of the Mortgagee under the Mortgage; and the proceeds payable by reason of any loss under any such policy shall be payable to the Mortgagee to be held and applied pursuant to Section 14(d); provided, however, that if and for so long as (i) no event of default hereunder shall have occurred and be continuing, (ii) Lessee maintains a tangible net worth, determined in accordance with generally accepted accounting principles, of at least \$100,000,000, and (iii) Lessee elects to restore the Premises, the proceeds payable by reason of any such loss shall be payable to Lessee. Every policy referred to in Section 15(a) shall provide that it will not be cancelled except after ten (10) days written notice to Lessor and the Mortgagee and that it shall not be invalidated by any act or neglect of Lessor or Lessee, nor by occupancy of the Premises for purposes more hazardous than permitted by such policy, nor by any foreclosure or other proceedings relating to the Premises, nor by change in title to the Premises.

(c) Evidence of Insurance. Lessee shall deliver to the Mortgagee original or duplicate policies or certificates of insurance, satisfactory to the Mortgagee, evidencing the existence of all insurance which is required to be maintained by Lessee hereunder, such delivery to be made (i) promptly after the execution and delivery hereof and (ii) not less than thirty (30) days prior to the expiration of any such insurance. Lessee shall not obtain or carry separate insurance concurrent in form or contributing in the event of loss with that required by this Section 15 unless Lessor is a named insured therein, with loss payable as provided herein. Lessee shall immediately notify Lessor whenever any such separate insurance is obtained and shall deliver to the Mortgagee the policies or certificates evidencing the same. Any insurance required hereunder may be provided under blanket policies which comply with the provisions of this Lease and specify the coverage and amounts thereof with respect to the Premises. Copies of all policies and certificates of insurance delivered to Mortgagee hereunder shall be delivered at the same time to Lessor.

(d) Premium Refunds. There shall be no apportionment of premiums with respect to insurance maintained hereunder at the expiration or termination of this Lease; Lessee may cancel any such policies as of (i) ten (10) days following the date of termination of this Lease pursuant to Section 20(b) hereof or (ii) the date of any other termination or expiration of this Lease, and obtain any premium refunds incident thereto. Lessee shall be entitled to any premium refund or dividend received by Lessor or Lessee on account of any insurance maintained by Lessee hereunder.



(e) Self-Insurance. Anything contained in this Section 15 to the contrary notwithstanding, any and all insurance which Lessee is obligated to carry pursuant to Section 15(a) may be carried pursuant to a prudent self-insurance program so long as Lessee maintains a tangible net worth, determined in accordance with generally accepted accounting principles, of at least \$100,000,000, provided that no event of default hereunder shall have occurred and be continuing. If the Premises shall be damaged or destroyed in a single casualty and Lessee shall be required to make an offer to purchase the Premises pursuant to Section 14(b) and such offer shall be rejected by Lessor pursuant to said Section 14(b), or if the Lease shall terminate pursuant to Section 14(c), Lessee shall pay to Lessor an amount equivalent to the Net Proceeds [as defined in Section 14(a)] which would exist or be payable with respect to such casualty if the insurance specified in Section 15(a) were being carried. Neither the maintenance of insurance or self-insurance for the risks specified in Sections 15(a) nor the delivery of the proceeds thereof to Lessor shall diminish the obligations of Lessee with respect to such risks pursuant to Section 10 above.

16. Uneconomic Use. If the Premises shall have become uneconomic or unsuitable for continued use in Lessee's business as a retail department store and Lessee has discontinued use thereof or decided to discontinue use thereof, then Lessee may, on or after ten (10) years from the Commencement Date, give notice to Lessor of its intention to terminate this Lease on any date for the payment of quarterly installments of Basic Rent pursuant to Section 6(a)(ii) (the Termination Date) during the Primary Term specified in such notice which occurs not less than 210 days after the giving of such notice. Such notice shall include (i) an irrevocable offer by Lessee to purchase the Premises on the Termination Date at a price determined in accordance with Exhibit B, (ii) a certificate of Lessee signed by a Vice President or Treasurer of Lessee that its board of directors has determined that the Premises are uneconomic or unsuitable for continued use in Lessee's business and (iii) an agreement of Lessee that Lessee has discontinued use thereof or will discontinue use thereof within twelve (12) months following the delivery of such notice, which agreement shall however reserve to Lessee the right to lease the Premises to unrelated third parties. If Lessor shall reject such offer by notice given to Lessee not later than the 30th day prior to the Termination Date this Lease shall terminate on the Termination Date, except with respect to obligations and liabilities of Lessee hereunder, actual or contingent, which have arisen on or prior to the Termination Date, upon payment by Lessee of all Basic Rent, Additional Rent and other sums then due and payable hereunder to and including the Termination Date. Unless Lessor shall have rejected such offer in accordance with this paragraph, Lessor shall be conclusively presumed to have accepted such offer, and, on the Termination Date, Lessor shall convey the Premises to Lessee or its designee pursuant to and upon compliance with Section 17.

17. Procedure Upon Purchase. (a) Title Conveyed. If Lessee shall purchase the Premises pursuant to this Lease, Lessor need not convey any better title thereto than existed on the date of the commencement of the term hereof, and Lessee or its designee shall accept such title, subject, however, to all charges, liens, security interests and encumbrances on the Premises (including without limitation those created or caused to be created by Lessee)

and all applicable legal requirements, but free of the lien of the Mortgage and charges, liens, security interests and encumbrances created by or resulting from acts of Lessor or any successor of Lessor without the written consent of Lessee.

(b) Payment of Purchase Price; Costs. Upon the date fixed for any purchase of the Premises hereunder, Lessee shall pay to Lessor the purchase price therefor specified herein together with all Basic Rent, Additional Rent and other sums then due and payable hereunder to and including such date of purchase, and Lessor shall deliver to Lessee an appropriate deed to the Premises with covenants against grantor's acts and any other instruments necessary to assign any other property then required to be assigned by Lessor pursuant hereto. Lessee may pay the purchase price determined in accordance with Exhibit B in cash or, in whole or in part, by assuming and agreeing to pay the Lessor's Note in accordance with its terms; provided, however, that in the event such purchase is made pursuant to Section 14 hereof, such purchase price may be paid in cash only. In the event Lessee shall elect to assume and agree to pay the Lessor's Note, Lessee shall accept title to the Premises subject to the lien of the Mortgage. In either event, Lessee shall pay all charges incident to such conveyance and assignment, including counsel fees, escrow fees, recording fees, title insurance premiums and all applicable taxes (other than any net income taxes of Lessor) which may be imposed by reason of such conveyance and assignment and the delivery of said deed and other instruments. Upon the completion of such purchase, but not prior thereto (whether or not any delay or failure in the completion of such purchase shall be the fault of Lessor), this Lease shall terminate, except with respect to obligations and liabilities of Lessee hereunder, actual or contingent, which have arisen on or prior to such date of purchase.

18. Assignment and Subletting. Lessee may sublet all or any part of the Premises or assign its interests hereunder, provided that each sublease shall expressly be made subject to the provisions hereof. No such assignment or sublease shall modify or limit any right or power of Lessor hereunder or affect or reduce any obligation of Lessee hereunder, and all such obligations shall continue in full effect during the term of this Lease as obligations of a principal and not of a guarantor or surety, as though no assignment or subletting has been made.

19. Permitted Contests. Lessee shall not be required, nor shall Lessor have the right, to pay, discharge or remove any tax, assessment, levy, fee, charge, lien or encumbrance, or to comply with any legal requirement applicable to the Premises or the use thereof, so long as Lessee shall contest at its own expense the existence, amount or validity thereof by appropriate proceedings which shall prevent the collection of or other realization upon the tax, assessment, levy, fee, charge, lien or encumbrance so contested, and the sale, forfeiture or loss of the Premises or any Basic Rent or any Additional Rent, to satisfy the same, and which shall not affect the payment of any Basic Rent or any Additional Rent, provided that such contest shall not subject Lessor to the risk of any criminal liability. Lessor, at the expense of Lessee, will cooperate with Lessee and execute any documents or pleadings legally required for any such contest.

20. Conditional Limitations; Default Provision. (a) Events of Default. Any of the following occurrences or acts shall constitute an event of default under this Lease: (i) if Lessee shall (1) fail to pay any Basic Rent, Additional Rent or other sum required to be paid by Lessee hereunder and such failure shall continue for ten (10) days after notice to Lessee of such failure, or (2) fail to observe or perform any other provision hereof and such failure shall continue for thirty (30) days after notice to Lessee of such failure (provided, that in the case of any such default which cannot be cured by the payment of money and cannot with diligence be cured within such 30-day period, if Lessee shall commence promptly to cure the same and thereafter prosecute the curing thereof with diligence, the time within which such default may be cured shall be extended for such period as is necessary to complete the curing thereof with diligence); or (ii) if Lessee shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any federal or state bankruptcy law or any similar federal or state law, or shall be adjudicated a bankrupt or become insolvent or shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due, or if a petition or answer proposing the adjudication of Lessee as a bankrupt or its reorganization pursuant to any federal or state bankruptcy law or any similar federal or state law shall be filed in any court and Lessee shall consent to or acquiesce in the filing thereof or such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof; or (iii) if a receiver, trustee or liquidator of Lessee or of all or substantially all of the assets of Lessee, or of the Premises or Lessee's estate therein shall be appointed in any proceeding brought by Lessee, or if any such receiver, trustee or liquidator shall be appointed in any proceeding brought against Lessee and shall not be discharged within sixty (60) days after such appointment, or if Lessee shall consent to or acquiesce in such appointment; or (iv) if the Premises shall have been left unoccupied and unattended for a period of sixty (60) consecutive days; or (v) if Lessee shall, in any manner, permit the divestiture of all or substantially all of its assets (other than in connection with a merger of Lessee into, or a sale of all or substantially all of Lessee's assets to, another corporation provided that the survivor of such merger or the purchaser of such assets shall assume in writing all of Lessee's obligations under this Lease). The foregoing subparagraph (v) shall not be deemed to prohibit any bona fide borrowing by Lessee or any of its subsidiaries in connection with which Lessee grants a lien or other security interest in its assets.

(b) Notice to Terminate. If an event of default shall have happened and be continuing, Lessor shall have the right to give Lessee notice of Lessor's intention to terminate the term of this Lease on a date not less than ten (10) days after the date of such notice; provided, however, that for purposes of this Section 20(b) only, if (a) the Mortgagee has given notice to Lessor and Lessee (pursuant to Article XXVII of the Mortgage) of a default under Section 7(a) of the Mortgage (the "Mortgage Default Notice") and (b) Lessee shall not have paid any portion of Basic Rent, Additional Rent or other sum required to be paid hereunder on the date the same shall have been due, then in that event, (i) Lessee shall be deemed to be in default under this Lease as of the date of receipt by Lessor and Lessee of the Mortgage Default Notice (the "Notice Receipt Date") and (ii) the Mortgage Default Notice shall be deemed to be a notice given (as of the Notice Receipt Date) by Lessor to Lessee of Lessor's intention to terminate the term of this Lease on the later

of (x) the date, if any, set forth in such Mortgage Default Notice, or (y) the date immediately succeeding the expiration of 10 days following said Notice Receipt Date. On the date set forth (or deemed to be set forth) in the notice of Lessor's intention to terminate the term of this Lease, the term of this Lease and the estate hereby granted shall expire and terminate as fully and completely and with the same effect as if such date were the date herein fixed for the expiration of the term of this Lease, and all rights of Lessee hereunder shall expire and terminate (but Lessee shall remain liable as hereinafter provided), unless before such date (i) all arrears in Basic Rent and Additional Rent shall have been paid in full, and (ii) all other defaults at the time existing under this Lease shall have been fully remedied.

(c) Right to Re-enter. If an event of default shall have happened and be continuing, Lessor shall have the right to give Lessee notice of Lessor's intention to re-enter and repossess the Premises on a date not less than ten (10) days after the date of such notice, unless before such date (i) all arrears in Basic Rent and Additional Rent shall have been paid in full, and (ii) all other defaults at the time existing under this Lease shall have been fully remedied. On and after the expiration of such period, Lessor shall have the immediate right to re-enter and repossess the Premises by summary proceedings, ejectment or in any manner Lessor determines to be necessary or desirable and the right to remove all persons and property therefrom. Lessor shall be under no liability by reason of any such re-entry, repossession or removal. No such re-entry or repossession of the Premises shall be deemed as an election by Lessor to terminate the term of this Lease unless (i) a notice of such intention is given to Lessee pursuant to Section 20(b), or (ii) such termination is decreed by a court of competent jurisdiction, or (iii) Lessee has been deprived of all possessory rights in the Premises. (The notice periods in Sections 20(b) and 20 (c) shall not be construed as successive but rather in the alternative, only one such period being required for the exercise of the remedies therein.)

(d) Authority to Relet. At any time and from time to time after the re-entry or repossession of the Premises pursuant to Section 20(c), Lessor may (and shall be under an obligation to) relet the Premises for the account of Lessee, in the name of Lessee or Lessor or otherwise, without notice to Lessee, for such term or terms and on such conditions and for such uses as Lessor, in its absolute discretion, may determine. Lessor may collect and receive any rents payable by reason of such reletting. Lessor shall not be liable for any failure to relet the Premises or for any failure to collect any rents due upon any such reletting. If the result of such reletting by Lessor is the deprivation of all possessory rights of the Premises by Lessee, this Lease shall be deemed terminated.

(e) Lessee's Liability Continues. No re-entry or repossession of the Premises pursuant to Section 20(c) or otherwise, and no reletting of the Premises pursuant to Section 20(d) or otherwise, shall relieve Lessee of its liabilities and obligations hereunder, all of which shall survive such re-entry, repossession or reletting, unless Lessee shall be deprived of all possessory rights of the Premises. In the event of an expiration or termination of the term of this Lease pursuant to Section 20(b), by operation of law or otherwise, or a repossession, re-entry or reletting which results in such a termination, Lessee shall be liable for damages pursuant to Section 20(g) hereof.

(f) Current Damages. In the event of any re-entry or repossession of the Premises by reason of the occurrence of an event of default and which does not result in a termination of this Lease, Lessee will pay to Lessor all Basic Rent, Additional Rent and other sums required to be paid by Lessee to and including the date of such re-entry or repossession; and thereafter Lessee shall, until the end of what would have been the term of this Lease in the absence of such re-entry or repossession, and whether or not the Premises shall have been relet, be liable to Lessor for, and shall pay to Lessor, as liquidated and agreed current damages: (i) all Basic Rent, Additional Rent and other sums which would be payable under this Lease by Lessee in the absence of such re-entry or repossession, less (ii) the net proceeds, if any, of any reletting effected for the account of Lessee pursuant to Section 20(d), after deducting from such proceeds all Lessor's expenses in connection with such reletting (including all repossession costs, brokerage commissions, reasonable attorneys' fees and expenses, employees' expenses, alteration costs and expenses of preparation for such reletting). Lessee will pay such current damages on the days on which Basic Rent would be payable under this Lease in the absence of such re-entry or repossession, and Lessor shall be entitled to recover the same from Lessee on each such day.

(g) Final Damages. In the event of any expiration or termination of the term of this Lease by reason of the occurrence of an event of default then Lessee shall forthwith pay to Lessor as and for all liquidated and agreed final damages for Lessee's default:

(i) the worth at the time of award, determined by the court having jurisdiction thereof, of the unpaid Basic Rent, the Accumulated Reserve Fund (which shall then be due and payable), Additional Rent and other sums which have been earned at the time of termination,

(ii) the worth at the time of award of the amount by which the unpaid Basic Rent, the Accumulated Reserve Fund (which shall then be due and payable), Additional Rent and other sums that would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided,

(iii) the worth at the time of award of the amount by which the unpaid Basic Rent, the Accumulated Reserve Fund (which shall then be due and payable), Additional Rent and other sums for the balance of the then-current Term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided, and

(iv) any other amounts necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of the things would be likely to result therefrom,

The "worth at the time of award" of the amounts referred to in subparagraphs (i) and (ii) of this Section (g) is to be computed by allowing interest at the lesser of (a) the maximum annual rate permitted by California law or (b) 17 1/2% per annum. The "worth at the time of award" of the amount referred to in subparagraph (iii) of this Section (g) is to be

computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1%.

(h) Right to Contest. Notwithstanding the foregoing provisions of this Section 20, no default hereunder, other than a default in the payment of Basic Rent or a default in the payment of interest on overdue Basic Rent, shall give rise to a right on the part of Lessor to terminate this Lease, if (i) at the time of the giving of notice of such default the tangible net worth of Lessee, determined in accordance with generally accepted accounting principles shall be more than \$100,000,000, and (ii) Lessee shall contest the existence of such default by appropriate legal proceedings conducted in good faith and with due diligence within sixty (60) days after the giving of notice of such default (provided that no sale or forfeiture of the Premises or criminal liability to Lessor will result by reason of the failure of Lessee to cure the default), and shall comply with any final order of the court or appellate court hearing such proceedings within the grace period applicable to such default provided for in Section 20(a).

21. Additional Rights of Lessor. (a) Rights Cumulative. No right or remedy hereunder shall be exclusive of any other right or remedy, but shall be cumulative and in addition to any other right or remedy hereunder or now or hereafter existing. Failure to insist upon the strict performance of any provision hereof or to exercise any option, right, power or remedy contained herein shall not constitute a waiver or relinquishment thereof for the future. Receipt by Lessor of any Basic Rent, Additional Rent or other sum payable hereunder with knowledge of the breach of any provision hereof shall not constitute a waiver of such breach, and no waiver by Lessor of any provision hereof shall be deemed to have been made unless made in writing. Lessor shall be entitled to injunctive relief in case of the violation, or attempted or threatened violation, of any of the provisions hereof, or to a decree compelling performance of any of the provisions hereof, or to any other remedy allowed to Lessor by law.

(b) Waiver. Lessee hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds, (i) any right and privilege which it or any of them may have to redeem the Premises or to have a continuance of this Lease after termination of Lessee's right of occupancy by order or judgment of any court or by any legal process or writ, or under the terms of this Lease, or after the termination of the term of this Lease as herein provided, and (ii) the benefits of any law which exempts property from liability for debt or for distress for rent.

(c) Expenses. If Lessee shall be in default in the performance of any of its obligations hereunder, Lessee shall pay to Lessor, on demand, all expenses incurred by Lessor as a result thereof, including reasonable attorneys' fees and expenses. If Lessor shall be made a party to any litigation commenced against Lessee and Lessee, at its expense, shall fail to provide Lessor with counsel approved by Lessor, Lessee shall pay all costs and reasonable attorneys' fees incurred by Lessor in connection with such litigation.

22. Financing of Additional Improvements. (a) Lessor to Finance. If during the term of this Lease, Lessee intends to construct additional Improvements which it wishes to finance under this Section 22, Lessee shall give written notice of its intention to Lessor ("Notice of Intent"), which notice shall contain a certification by Lessee of the estimated cost of the additional Improvements. If at the time of the Notice of Intent the tangible net worth of Lessee shall be more than \$100,000,000 as determined in accordance with generally accepted accounting principles and if the estimated cost as certified by Lessee of the additional Improvements exceeds \$100,000 during any twelve month period, and subject to compliance with all the conditions of this Section, Lessee shall sell and Lessor shall purchase the additional Improvements, or cause its designee to purchase the additional Improvements (whichever entity that purchases the additional Improvements being hereinafter referred to as "Addition Owner"), for an amount ("Addition Purchase Price") equal to the Lessee's cost of completing the additional Improvements, which completion cost shall include the cost of any land contiguous to the Premises purchased for the purpose of placing thereon the additional Improvements or any portion thereof or for providing means of access thereto, or parking facilities therefor, all direct and indirect costs associated with the construction of the additional Improvements, and the conveyance thereof to Addition Owner, including all closing costs required in connection with Addition Owner's acquisition and financing thereof. Lessor shall finance the purchase by borrowing the amount of the Addition Purchase Price, such borrowing to be evidenced by the issuance of a promissory note ("Addition Note"). Lessor shall not be obligated to purchase the additional Improvements unless it has obtained a commitment acceptable to it and to Lessee for financing of one hundred per cent (100%) of the Addition Purchase Price. Lessor shall use reasonable efforts to secure the financing of the additional Improvements as herein provided.

(b) Procedure. Forthwith upon receipt of Lessee's Notice of Intent, Addition Owner shall use reasonable efforts to secure the financing of the additional Improvements from an institutional lender.

If within ninety (90) days from the date of receipt of Lessee's Notice of Intent, Lessor shall secure a commitment from an institutional lender setting forth the terms and conditions on which it proposes to purchase the Addition Note, Lessor shall forthwith furnish a copy of such commitment to Lessee who, within sixty (60) days of its receipt of such commitment, shall advise Addition Owner to accept or reject such commitment. If Lessee advises acceptance, Addition Owner shall accept the commitment. If Lessee advises rejection and simultaneously furnishes Addition Owner with a letter of intent or commitment from another institutional lender setting forth, in substance, the terms and conditions on which such other lender proposes to purchase the Addition Note, Addition Owner shall accept the commitment of such other lender on the terms and conditions set forth in such lender's letter of intent or commitment.

(c) Conditions. Notwithstanding any provision contained in the preceding paragraphs, Lessor shall not be required to purchase the additional Improvements or to accept a commitment from any institutional lender unless the conditions set forth in the preceding paragraphs of this section, and all of the following conditions are satisfied:

(f) Addition Owner and Lessee shall have amended this Lease to provide that: (u) Lessee shall convey title to the additional Improvements and any land purchased for the purpose of constructing or operating the additional Improvements as referred to in subsection 22(a) to Addition Owner and Addition Owner shall pay to Lessee the Addition Purchase Price upon Addition Owner's sale of the Addition Note; (v) the description of the land described in Part I of Exhibit A hereto will be amended to add any land purchased for the purpose of constructing the additional Improvements as referred to in subsection 22(a); (w) Basic Rent thereafter for the balance of the term of this Lease will be increased by an amount sufficient to amortize fully the Addition Note with interest over the balance of the Primary Term and any Extended Terms with respect to which Lessee has exercised its rights and options under Section 5(b) hereof; (x) If Addition Owner and Lessee shall have agreed upon the terms and conditions of additional equity investment of Addition Owner in connection with such financing, rent for the Extended Terms shall be increased appropriately; otherwise, there shall be no increase in rent during the Primary or Extended Terms, except pursuant to subpart (w) hereof; (y) the repurchase price computed from Exhibit B will be increased (i) by an amount equal to the then unamortized balance of the Addition Note including interest accrued thereon, and (ii) if Addition Owner has made an additional equity investment, by such other premium as may be agreed upon; and (z) the amounts in the Accumulated Reserve Fund shall be adjusted, as necessary.

(ii) There is no event of default by the Lessee under this Lease continuing at the date of issuance of the Addition Note.

(iii) If the Addition Note is not purchased by Mortgagee, Mortgagee shall have agreed with the lender who purchases the Addition Note that the Mortgagee's loan and the Addition Note are secured pari passu, and such other lender shall have agreed that, in the event of default under the Mortgage or the Addition Note, or both, Mortgagee shall determine the manner and extent to which the remedies available at law or under the Mortgage or the instruments securing the Addition Note are utilized. Mortgagee shall have the right to approve the form and content of such agreement, which approval shall not be unreasonably withheld.

(iv) The Addition Note and the instruments securing said Note shall be without personal liability to Addition Owner, Lessor, or any of its designees or affiliates for payment of any indebtedness or performance of any obligation.

(v) Such other certificates (including, but not limited to, endorsements increasing the insurance coverage, if any, at the time required by Section 15(a)), documents, opinions of counsel, surveys, and any other instruments as may be reasonably required by Lessor and any lenders acquiring the Addition Note shall have been delivered.

(vi) Whether or not the sale of the Addition Note is actually consummated, Lessee shall pay or cause to be paid all reasonable costs and expenses of Lessor, Mortgagee, and any other lender which has committed to acquire the Addition Note paid or incurred by them in connection therewith, including, but not limited to, (i) the reasonable fees and expenses of their respective counsel, (ii) all printing expenses, (iii) the amount of



any filing, registration and recording taxes and fees, (iv) documentary stamp taxes, if any, and (v) title insurance charges.

(d) Lessee may Finance. Lessee shall have the right at any time to finance the additional Improvements through mortgage of its leasehold interest in this Lease, in which case the provisions of this Section 22 shall not apply.

23. Notices, Demands and Other Instruments. All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Lease shall be in writing and shall be validly given when mailed by prepaid registered or certified mail, (a) if to Lessor, addressed to Lessor at its address set forth above, and (b) if to Lessee, addressed to Lessee at its address set forth above, marked "Attention: Vice President, Real Estate". Lessor and Lessee each may from time to time specify any address in the United States as its address for purposes of this Lease by giving 15 days' notice to the other party.

24. Estoppel Certificates. Lessee and Lessor will, from time to time, upon 20 days prior request by the other, cause to be executed, acknowledged and delivered a certificate stating that this Lease is unmodified and in full effect (or, if there have been modifications, that this Lease is in full effect as modified, and setting forth such modifications) and the then amount of Basic Rent and the dates to which Basic Rent, Additional Rent and other sums payable hereunder have been paid, and either stating that to the knowledge of the signer of such certificate no default exists hereunder or specifying each such default of which the signer has knowledge. Any such certificate may be relied upon by any prospective mortgagee or purchaser of the Premises.

25. No Merger. There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Premises by reason of the fact that the same person acquires or holds, directly or indirectly, this Lease or the leasehold estate hereby created by any interest herein or in such leasehold estate as well as the fee estate in the Premises or any interest in such fee estate.

26. Surrender. Upon the expiration or termination of the term of this Lease (other than a termination pursuant to Section 17), Lessee shall surrender the Premises to Lessor in the condition in which the Premises were originally received from Lessor, except as repaired, rebuilt, restored, altered or added to as permitted or required hereby and except for ordinary wear and tear. Lessee shall remove from the Premises within thirty (30) days after such expiration or termination all of the Excluded Personal Property then situated thereon and shall repair any damage caused by such removal. Excluded Personal Property not so removed shall become the property of Lessor, and Lessor may cause such Excluded Personal Property to be removed from the Premises and disposed of, but the cost of any such removal and disposition (less the proceeds thereof) and of repairing any damage caused by such removal shall be borne by Lessee.

27. Separability; Binding Effect. Each provision hereof shall be separate and independent and the breach of any such provision by Lessor shall not discharge or relieve Lessee from its obligations to perform each and every

covenant to be performed by Lessee hereunder. If any provision hereof or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remaining provisions hereof, or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforceable to the extent permitted by law, and in the place of such invalid, illegal or unenforceable term or provision, there shall be substituted a like, but valid, enforceable and legal provision which comports to the findings of the court so holding and most nearly accomplishes the original intention of the parties. All provisions contained in this Lease shall be binding upon, inure to the benefit of, and be enforceable by, the respective successors and assigns of Lessor and Lessee to the same extent as if each such successor and assign were named as a party hereto. It is agreed that any covenant or obligation of Lessor under this Lease shall not be binding upon Lessor herein named or any subsequent lessor with respect to any period subsequent to the transfer of all its interests in the Premises by operation of law or otherwise, and that in the event of any such transfer, Lessee agrees to look solely to the transferee for the performance of any obligation of Lessor hereunder, but only with respect to the period beginning with such transfer and ending with a subsequent transfer of such interest. This Lease may not be changed, modified or discharged except by a writing signed by Lessor and Lessee.

28. Investment Tax Credit. Lessor 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 Lessee all investment tax credits which may be available from time to time in respect of the Premises under Section 38 of said Code to the extent such investment tax credit is not usable under said Code by the Lessor, its successors and assigns. Lessor agrees, at Lessee's expense, to execute timely all documents prepared by Lessee and delivered to Lessor in advance and required by said Code, and regulations issued thereunder, to enable Lessee to obtain such investment tax credit.

Lessor 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 Lessee upon written request and otherwise to cooperate with Lessee in said matter; provided, however, that the foregoing shall not be binding upon a Mortgagee that acquires the Premises by foreclosure or deed-in-lieu thereof. Lessor agrees not to destroy or otherwise dispose of such records until written consent to such destruction or disposal has been obtained from Lessee.

29. Lessor's Right to Cure Lessee's Default. If Lessee shall fail to make any payment or perform any act required to be made or performed under this Lease, Lessor, after notice to and demand upon Lessee, and without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Lessee, and may enter upon the Premises for such purpose and take all such action thereon as, in Lessor's opinion, may be necessary or appropriate therefor. No such entry shall be deemed an eviction of Lessee. All sums so paid by Lessor and all costs and expenses (including, without limitation, attorneys' fees and expenses) so incurred, together with interest thereon (to the extent permitted by law) at the rate of

17 1/2% per annum compounded monthly from the date on which such sums or expenses are paid or incurred by Lessor, shall be paid by Lessee to Lessor on demand.

30. Lessor's Right to Inspect. Lessee shall permit Lessor, the Mortgagee, if any, and their respective authorized representatives to inspect the Premises during usual business hours.

31. Conveyance by Lessor. If the Mortgagee shall acquire the Premises upon foreclosure or deed-in-lieu thereof and shall convey the Premises other than as security for a debt, such Mortgagee shall thereupon be released from all future liabilities and obligations of the Lessor under this Lease and all such future liabilities and obligations shall thereupon be binding upon the new owner of the Premises.

32. Option to Purchase at Fair Market Value. Lessor thereby grants to Lessee the option to purchase (the "Purchase Option") the Premises, as of the end of the Primary Term, or if and to the extent Lessee exercises its options to extend the term of this Lease, as of the end of any current Extended Term (the "Purchase Option Date") for a price equal to the fair market value of the Premises as unencumbered by this Lease or any sublease as hereinafter determined (the "Fair Market Value") plus in either case all closing costs including without limitation any applicable prepayment penalty. Such option shall be exercised by written notice from Lessee to Lessor, given not less than one (1) year prior to the expiration of the Primary Term or such Extended Term, as the case may be, and in each case accompanied by a statement of the Fair Market Value determined in accordance with Section 33.

To enable Lessee to make an informed judgment with respect to the foregoing option, and to establish the Fair Market Value as of the end of the Primary Term or any Extended Term, as the case may be, Lessee may notify Lessor in writing not more than twenty-four (24) months prior to the expiration of the term of the Lease stating that Lessee desires a determination of Fair Market Value of the Premises as of the end of the term of the Lease. Thereafter, Lessor and Lessee shall consult for the purpose of determining such Fair Market Value as of the end of the term of the Lease and any value agreed upon in writing shall constitute such Fair Market Value for the purposes of this Section. If Lessor and Lessee fail to agree upon such Fair Market Value prior to sixteen (16) months before the expiration of the term of this Lease, Lessee may request that such Fair Market Value be determined by the appraisal procedure hereinafter described. Lessee's request for a determination of such Fair Market Value shall not obligate Lessee to exercise the option provided in this Section but, if Lessee exercises such option, Lessee and Lessor shall each pay the fees and disbursements of any appraiser appointed by it and shall share equally the fees and expenses of any third appraiser and any other costs and expenses of any appraisal pursuant to this Section 32, while, if Lessee does not exercise such option, Lessee shall pay all costs and expenses of any appraisal pursuant to this Section 32. If Lessee exercises the Purchase Option, Lessor shall transfer and convey or cause the transfer and conveyance of the Premises to the Lessee in accordance with the provisions of Section 17 on the Purchase Option Date, unless Lessor by written notice to Lessee specifies a different date, which date may be not more than thirty (30) days prior to or sixty (60) days after the Purchase Option Date.

There shall be no closing adjustments, other than for the rent payable by Lessee hereunder for the month in which the Purchase Option Date occurs and other accrued obligations of Lessee under the Lease.

If Lessor shall be unable to give title or make conveyance as stipulated, Lessor shall convey such title as it then has if Lessee elects to accept the same. The termination of this Lease prior to exercise of the Purchase Option, or prior to or after exercise of the Purchase Option if such termination is pursuant to Section 20, shall terminate all rights and obligations of Lessor and Lessee under this Section. If the Purchase Option has been exercised, then the termination of this Lease for any cause except pursuant to Section 20 shall not terminate the rights and obligations of Lessee and Lessor under this Section. The Purchase Option shall not be assignable except as part of this Lease.

In the event of Lessee's exercise of the Purchase Option, this Lease shall not terminate, except pursuant to Section 20, until the Premises shall have been conveyed to Lessee and the purchase price therefor and all other sums due under this Lease shall have been paid.

33. Appraisal to Determine Fair Market Value. The term "Fair Market Value" as used in this Section shall mean the fair market value of the Premises unencumbered by this Lease or any sublease, determined using the standards then commonly used by professional appraisers in determining fair market value of similarly improved real property in the State in which the Premises are located. If the parties hereto fail to agree under Section 32 as to the Fair Market Value such question shall be submitted upon Lessee's request to a board of appraisers, two in number, one named by Lessor and one named by Lessee, each of whom shall be a qualified member of the American Institute of Real Estate Appraisers, or any successor of such Institute, or if such organization or successor shall no longer be in existence, a recognized national association of institute of appraisers. Each appraiser so appointed shall be instructed to determine independently the Fair Market Value in accordance with the definition of such term contained herein and within fifty (50) days after the making of Lessee's request. If only one appraiser shall have been so appointed within twenty (20) days after the making of Lessee's request, or if two appraisers shall have been so appointed but only one such appraiser shall have made such determination within fifty (50) days after the making of Lessee's request, then the determination of such appraiser shall be final and binding upon the parties. If two appraisers shall have been appointed and shall have made their determinations within the respective requisite periods set forth above and if the difference between the amounts so determined shall not exceed 10% of the lesser of such amounts, then the Fair Market Value shall be an amount equal to 50% of the sum of the amounts so determined. If the difference between the amounts so determined shall exceed 10% of the lesser of such amounts, then such two appraisers shall have twenty (20) days to appoint a third appraiser, but if such appraisers fail to do so, then either party may request the American Arbitration Association or any successor organization thereto to appoint an appraiser within twenty (20) days of such request, and both parties shall be bound by any appointment so made within such twenty (20) days period. If no such appraiser shall have been appointed within such twenty (20) days or within ninety (90) days of the original request for a determination of Fair Market Value, whichever is earlier, either Lessor or Lessee may request any court having jurisdiction to

make such appointment. Any appraiser appointed by the original appraisers, by the American Arbitration Association or by such court shall be instructed to determine the respective fair market value in accordance with the definition of such term contained herein and within thirty (30) days after its appointment. The determination of the appraiser which differs most in terms of dollar amount from the determinations of the other two appraisers shall be excluded, and 50% of the sum of the remaining two determinations shall be final and binding upon Lessor and the Lessee as the Fair Market Value for such interest. This provision for determination by appraisal shall be specifically enforceable to the extent such remedy is available under applicable law, and any determination hereunder shall be final and binding upon the parties except as otherwise provided by applicable law.

34. Right of First Offer. From and after the date hereof, Lessor shall not sell or convey (other than to Lessee as contemplated by this Lease) all or any part of the Premises unless Lessor first notifies Lessee of Lessor's intention so to convey and simultaneously offers to sell the Premises, or such part thereof, to Lessee or its designee at the price and on such other terms as Lessor would accept with respect to such a sale to any other person or entity provided, however, that the foregoing provision shall not apply to a sale pursuant to foreclosure of the Mortgage or in lieu thereof (but shall apply to any subsequent sale or conveyance of the Premises). Within thirty (30) days after the giving of such notice and offer, Lessee or its designee may accept such offer by giving written notice to Lessor. Any such sale shall be effected in the manner provided in Section 17, with conveyance of the Premises, or such part thereof, to be made within ninety (90) days after the acceptance of such offer. If Lessee or its designee does not accept such offer, this Lease shall continue in full force and effect and Lessor may convey the Premises or such part thereof to any third party, but only at such price and upon such terms as are no more favorable to such third party than those set forth in Lessor's offer to Lessee referred to above, and provided, however, that Lessor shall have sold, or entered into a contract to sell, the Premises, or such part thereof, within 180 days after the giving of the aforesaid notice and offer. It is expressly understood and agreed that Lessor's obligations under this Section 34 are recurring obligations that shall also bind the successors and assigns of Lessor.

35. Headings. The headings used in this Lease are for convenient reference only and shall not to any extent have the effect of modifying, amending or changing the provisions of this Lease.

36. Governing Law. This Lease shall be governed by and interpreted under the laws of the state in which the Premises are located.

37. Memorandum of Lease. Lessor and Lessee shall, promptly upon the request of either, enter into a short form memorandum of this Lease, in form suitable for recording under the laws of the State in which the Premises are located, in which reference to this Lease shall be made.

38. Exhibits. Attached hereto are Exhibits A, B, C, and D referred to in this Lease, which Exhibits are hereby incorporated by reference herein.

39. Completion of Improvements. (a) Requirement of Completion. Lessee, not later than September 30, 1984, subject to delays caused by

Unavoidable Delay, but in no event later than January 31, 1985 (the "Completion Deadline") will, at its sole cost and expense, complete the construction of the Improvements on the Premises substantially in accordance with the plans and specifications therefor previously approved by Lessor and Mortgagee. Lessee will deliver to Lessor promptly after completion of such construction but in no event later than the Completion Deadline (A) an as-built survey, certified by a surveyor or surveyors licensed in California, showing the building and improvements within the boundary lines of the Premises, and showing the location of all easements affecting the Premises, and (b) a certificate of Lessee, executed by a Vice President of Lessee, in the form of Exhibit D. In all events, Lessee shall cause such construction to be completed and fully paid for without any cost to Lessor.

(b) Failure to Meet Completion Deadline; Purchase Offer. If such construction is not completed on or before the Completion Deadline, Lessee shall make an offer (or upon Lessee's failure to make an offer shall be deemed to have made an offer) to Lessor as of the Completion Deadline to purchase the Premises for the purchase price computed from Exhibit B hereof. Lessor shall accept or shall duly reject Lessee's offer in writing within 30 days after the Completion Deadline. If Lessor fails to accept or duly to reject Lessee's offer within 30 days after receipt of Lessee's offer, such offer shall be deemed to have been accepted. If such offer is accepted, or is deemed to have been accepted, Lessor on the Specified Date as hereinafter defined shall transfer and convey or cause the transfer or conveyance of the Premises in the manner provided in Section 17 hereof. If Lessor accepts such offer, Lessor shall designate the Specified Date in its notice of acceptance, which date shall be the next succeeding date for the payment of quarterly installments of debt service under Lessor's Note which occurs not less than 60 days after the date of such notice of acceptance. If such offer shall be deemed accepted by reason of a failure to accept or duly to reject an offer, the Specified Date shall be the next succeeding date for the payment of quarterly installments of interest under Lessor's Note which occurs not less than 60 days after the Completion Deadline. If Lessor accepts or is deemed to have accepted such offer and Lessee has elected to pay the entire purchase price in cash, this Lease shall in no event terminate until the Premises shall have been conveyed to Lessee and the purchase price and all other sums due under this Lease shall have been paid. If Lessee (or its designee) elects to assume and agree to pay Lessor's Note or if Lessor duly rejects Lessee's offer to purchase the Premises or if Lessor is unable to effectuate conveyance of the Premises to Lessee by the Specified Date, then this Lease shall remain in full force and effect and Lessee shall thereafter proceed with due diligence to complete construction of the Improvements on the Premises.

40. Deferred Improvement Agreement. Lessee agrees to undertake and fulfill all obligations that may devolve upon Lessor under that certain Deferred Improvement Agreement with the City of Vacaville, California (the "City"), recorded on November 24, 1982 as Instrument No. 44606, Page 78428 Salono County Official Records (the "Agreement"), and to defend, indemnify and save Lessor from all liability, cost or expense arising therefrom, except such liability, cost and expense as may result from the negligent acts or wilfull misconduct of Lessor. Lessee may contest at its own expense any matters concerning the Agreement, provided that Lessor and the Premises are preserved from any liability or loss therefrom. If necessary, Lessor agrees to cooperate at Lessee's expense in any such contest or in the fulfillment of the

obligations under the Agreement. Upon completion of the improvements contemplated in the Agreement, Lessee agrees to request that the City provide a certificate of completion and acceptance, and if such certificate is obtained, Lessee agrees to promptly forward a copy thereof to Lessor.

41. Exculpation. Except to the extent of its interest in the Premises neither Lessor nor any of its partners shall have any personal liability for any claim arising under or otherwise in connection with this Lease; provided, however, that nothing contained in this Section shall be construed as impairing in any manner (i) the validity of the obligations imposed on the Lessor under this Lease or (ii) the rights of Lessee to bring suit in equity for specific performance of the obligations of the Lessor hereunder; provided further, however, that no partner of Lessor shall have any personal liability to expend any of its own funds to cause Lessor to comply with any order of specific performance.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be signed and sealed as of the date first above written.

WITNESSED:

[SEAL]

Denise Moran

Quita Ubistini

DOUBLE V ASSOCIATES L.P.  
"LESSOR"

By: VVK CORP., its General Partner

By: [Signature]  
Lawrence Kadish

Its: President

[SEAL]

Mary Ann Jones  
Mary Ann Jones

Michael W. Gerych  
Michael W. Gerych

K MART CORPORATION  
"LESSEE"

By: [Signature]

HELEN C. LEFLER  
Its: Vice President

And: [Signature]

A.N. PALMER  
Its: Assistant Secretary

ACKNOWLEDGEMENTS

State of New York )  
 ) SS  
County of NASSAU )

On this 15<sup>th</sup> day of June in the year 1984, before me,  
CAROLE HORNIK, a Notary Public of said State, duly commissioned  
and sworn, personally appeared Lawrence Kadish, known to me to be the  
President of VVK Corp., a Delaware corporation, the General Partner of  
DOUBLE V ASSOCIATES L.P., a Delaware limited partnership that executed  
the within instrument, and acknowledged to me that such partnership  
executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my  
official seal the day and year in this certificate first above written.

Carole Hornik  
Notary Public in and for said State

CAROLE HORNIK  
NOTARY PUBLIC, State of New York  
No. 30-4806415  
Qualified in Nassau County  
Commission Expires March 30, 1986

(Seal)

State of Michigan )  
 ) SS  
County of Oakland )

On this 13<sup>th</sup> day of June in the year 1984, before me,  
Linda M. Holser, personally appeared HELEN C. LEFLER  
and A. N. Palizzi, known to me to be the persons who executed the  
within instrument as the Vice President and Assistant Secretary of K MART  
CORPORATION, a Michigan corporation, on behalf of said corporation, and  
acknowledged to me that such corporation executed the within instrument  
pursuant to its by-laws or a resolution of its board of directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my  
official seal the day and year in this certificate first above written.

Linda M. Holser  
Notary Public in and for said State

(Seal)

LINDA M. HOLSER  
Notary Public, Oakland County, Mich.  
My Commission Expires May 10, 1987



EXHIBIT A

TO

LEASE

Part I

Description of Leased Premises

All of Parcel 6 of the Parcel Map prepared for K mart Corporation as recorded in Parcel Map Book \_\_, Page \_\_, Solano County Records, also being a portion of Parcel "A" of that certain Parcel Map prepared for Seghetti et al, Zupo, and Burson-Fisher property as same appears of record in Parcel Map Book 24, pages 14 and 15, Solano County Records, described as follows: Beginning at the most southerly corner of said Parcel "A"; thence along the southerly line of said Parcel "A" also being the northwesterly line of East Monte Vista Avenue N 62° 44' 44" E, 102.17 feet; thence leaving said northwesterly line N 27° 15' 16" W, 87.11 feet; thence along a curve to the right, said curve having a radius of 100.00 feet, a central angle of 26° 17' 10", a distance along the arc of 45.48 feet subtended by a chord bearing N 14° 06' 41" W for 45.48 feet; thence N 00° 58' 06" W, 127.91 feet; thence N 89° 01' 54" E, 158.09 feet; thence S 27° 15' 16" E, 156.07 feet; thence S 62° 44' 44" W, 15.00 feet; thence S 27° 15' 16" E, 20.00 feet to the said northwesterly line of East Monte Vista Avenue; thence along the said line, N 62° 44' 44" E, 55.00 feet; thence N 27° 15' 16" W, 120.00 feet; thence N 35° 42' 22" W, 34.02 feet; thence N 00° 58' 06" W, 139.39 feet; thence N 89° 01' 54" E, 89.53 feet to the westerly line of Browns Valley Parkway; thence along the said westerly line of Browns Valley Parkway the following two (2) courses; (1) N 27° 15' 16" W, 29.34 feet, and (2) along a curve to the right, said curve having a radius of 450.00 feet, a central angle of 24° 33' 17", a distance along the arc of 192.85 feet subtended by a chord bearing N 14° 58' 37" W, 191.38 feet; thence leaving the said westerly line, S 89° 01' 54" W, 55.20 feet; thence S 00° 58' 06" E, 185.00 feet, thence S 89° 01' 54" W, 89.38 feet; thence N 00° 58' 06" W, 210.00 feet; thence S 89° 01' 54" W, 170.60 feet; thence S 00° 58' 06" E, 0.27 feet; thence S 89° 01' 54" W, 321.17 feet to the westerly line of said Parcel "A"; thence along said west line the following five (5) courses: (1) S 00° 58' 06" E, 447.58 feet, (2) N 89° 01' 54" E, 184.74 feet, (3) S 00° 58' 06" E, 129.61 feet, (4) N 62° 44' 44" E, 200.00 feet, and (5) S 00° 58' 06" E, 178.45 feet to the point of beginning, containing 6.467 acres or 281,710 square feet of land.

Together with all right, title and interest in that certain Declaration of Easements, Restrictions and Operating Agreements dated as of June 1, 1984, recorded June \_\_, 1984 in Book \_\_, Page \_\_, Solano County Records.

## Part II

### Permitted Exceptions

1. Taxes for the fiscal year 1984-85, a lien not yet due or payable.
2. Supplemental taxes, if any, assessed pursuant to the provisions of Chapter 498, Statutes of 1983 of the State of California, a lien not yet due or payable.
3. Avigational easement granted to the County of Solano, recorded April 22, 1981 in Book 1981, Page 28092, Series No. 16364, Solano County Records.
4. Avigational easement granted to the County of Solano, recorded April 22, 1981 in Book 1981, Page 28099, Series No. 16365, Solano County Records.
5. Provisions of the Redevelopment Plan for the Vacaville Community Redevelopment Project, as set forth in Ordinance No. 1164, notice of which was recorded July 2, 1982 in Book 1982, Page 42550, Series No. 24173, Solano County Records.
6. Public utility easements as shown on the Parcel Map recorded in Book \_\_, Page \_\_, Solano County Records.
7. Deferred Improvement Agreement recorded November 24, 1982 as Instrument No. 44606, Page 78428, Solano County Records.
8. Avigational easement granted to the County of Solano, recorded July 13, 1983 in Book 1983, Page 54548, Series No. 28899.
9. Notice of Assessment recorded February 16, 1984 in Book 1984, Page 13312, Series No. 7224, a lien not yet due or payable.
10. Declaration of Easements, Restrictions and Operating Agreements, dated as of June 1, 1984, by K mart Corporation.
11. Storm drainage easement as shown on the survey prepared by N K Engineering & Surveying Co., Inc., dated April 20, 1984.
12. Easements for the transmission of electrical energy and natural gas, as well as various rights related thereto, granted by K mart Corporation to Pacific Gas and Electric Company, as described in that certain instrument dated June 25, 1984.

EXHIBIT B

Computation of Purchase Prices

Upon the purchase of the Premises pursuant to Sections 14 or 16, the purchase price payable shall be an amount equal to \$3,700,000, multiplied by the percentage set forth in column 2 below opposite the quarterly payment date.

<u>Column 1</u> <u>Quarterly Payment Date</u>	<u>Column 2</u> <u>Applicable Percentage</u>
0	104.610708368
1	105.709180600
2	107.558065263
3	109.433835564
4	111.336493314
5	112.938858788
6	114.557543018
7	116.192249822
8	117.842643365
9	119.365724931
10	120.902739431
11	122.453319679
12	124.017056754
13	125.451233849
14	126.896663692
15	128.352899140
16	129.819448964
17	131.153895820
18	132.496583595
19	133.846975091
20	135.214243778
21	136.475228333
22	136.856884922
23	137.237362622
24	137.616593445
25	137.945409820
26	138.272505065
27	138.597836103
28	138.921621746
29	139.243233942
30	139.562604365
31	139.879662540
32	140.194335778
33	140.506549104
34	140.816225186
35	141.123284261
36	141.427644058
37	141.729219720
38	142.027923723
39	142.323665791
40	142.616352809

Column 1  
Quarterly Payment Date

Column 2  
Applicable Percentage

41	142.654493936
42	142.686761581
43	142.713188586
44	142.733818329
45	142.748704750
46	142.757912994
47	142.761520424
48	142.759617734
49	142.752309385
50	142.739714156
51	142.721966866
52	142.699219164
53	142.671639670
54	142.639416609
55	142.602757437
56	142.561891242
57	142.517069199
58	142.468566495
59	142.416682853
60	142.182123951
61	141.755022039
62	142.047050093
63	142.359431881
64	142.300586260
65	142.252102995
66	142.214859661
67	142.189784142
68	142.061318426
69	141.943374114
70	141.836930378
71	141.743024449
72	141.525762826
73	141.318990786
74	141.123800482
75	140.941349973
76	140.611834719
77	140.292524022
78	139.984634939
79	139.689459796
80	139.219078366
81	138.758286135
82	138.308438302
83	137.870975900
84	135.503300117
85	133.090051005
86	130.631034311
87	128.126101034
88	125.313590127
89	122.446790466
90	119.525451532

Column 1  
Quarterly Payment Date

Column 2  
Applicable Percentage

91	116.549374366
92	113.210954608
93	109.807906848
94	106.339910983
95	102.806706897
96	98.846680614
97	94.809765980
98	90.695556770
99	86.503718461
100	-0-

**EXHIBIT C - RENT SCHEDULES**

**PRIMARY TERM BASIC RENT SCHEDULE**

<b>Payment No.</b>	<b>Column #1 Basic Rent</b>	<b>Column #2 Contributions to Reserve Fund</b>	<b>Column #3 Accumulated Reserve Fund</b>	<b>Column #4 Reserve Fund Payments</b>	<b>Column #5 Cash Payments (Column #1 less Column #2 plus Column #4)</b>
1	\$200,051.41	\$45,021.41	\$ 45,021.41	\$ 0.00	\$155,030.00
2	200,051.41	97,170.41	142,191.82	0.00	102,881.00
3	200,051.41	97,170.41	239,362.23	0.00	102,881.00
4	200,051.41	97,170.41	336,532.64	0.00	102,881.00
5	200,051.41	97,170.41	433,703.05	0.00	102,881.00
6	200,051.41	97,170.41	530,873.46	0.00	102,881.00
7	200,051.41	97,170.41	628,043.87	0.00	102,881.00
8	200,051.41	97,170.41	725,214.28	0.00	102,881.00
9	200,051.41	97,170.41	822,384.69	0.00	102,881.00
10	200,051.41	97,170.41	919,555.10	0.00	102,881.00
11	200,051.41	97,170.41	1,016,725.51	0.00	102,881.00
	200,051.41	97,170.41	1,113,895.92	0.00	102,881.00
	200,051.41	97,170.41	1,211,066.33	0.00	102,881.00
14	200,051.41	97,170.41	1,308,236.74	0.00	102,881.00
15	200,051.41	97,170.41	1,405,407.15	0.00	102,881.00
16	200,051.41	97,170.41	1,502,577.56	0.00	102,881.00
17	200,051.41	97,170.41	1,599,747.97	0.00	102,881.00
18	200,051.41	97,170.41	1,696,918.38	0.00	102,881.00
19	200,051.41	97,170.41	1,794,088.79	0.00	102,881.00
20	200,051.41	97,170.41	1,891,259.20	0.00	102,881.00
21	200,051.41	97,170.41	1,988,429.61	0.00	102,881.00
22	200,051.41	46,870.41	2,035,300.02	0.00	153,181.00
23	200,051.41	46,870.41	2,082,170.43	0.00	153,181.00
24	200,051.41	46,870.41	2,129,040.84	0.00	153,181.00
25	200,051.41	46,870.41	2,175,911.25	0.00	153,181.00
26	200,051.41	46,870.41	2,222,781.66	0.00	153,181.00
27	200,051.41	46,870.41	2,269,652.07	0.00	153,181.00
28	200,051.41	46,870.41	2,316,522.48	0.00	153,181.00
29	200,051.41	46,870.41	2,363,392.89	0.00	153,181.00
30	200,051.41	46,870.41	2,410,263.30	0.00	153,181.00
31	200,051.41	46,870.41	2,457,133.71	0.00	153,181.00
32	200,051.41	46,870.41	2,504,004.12	0.00	153,181.00
33	200,051.41	46,870.41	2,550,874.53	0.00	153,181.00
34	200,051.41	46,870.41	2,597,744.94	0.00	153,181.00
35	200,051.41	46,870.41	2,644,615.35	0.00	153,181.00
	200,051.41	46,870.41	2,691,485.76	0.00	153,181.00
	200,051.41	46,870.41	2,738,356.17	0.00	153,181.00
38	200,051.41	46,870.41	2,785,226.58	0.00	153,181.00
39	200,051.41	46,870.41	2,832,096.99	0.00	153,181.00
40	200,051.41	46,870.41	2,878,967.40	0.00	153,181.00

ment No.	Column #1 Basic Rent	Column #2 Contributions to Reserve Fund	Column #3 Accumulated Reserve Fund	Column #4 Reserve Fund Payments	Column #5 Cash Payments (Column #1 less Column # plus Column #
41	200,051.41	32,135.41	2,911,102.81	0.00	167,916.00
42	200,051.41	32,135.41	2,943,238.22	0.00	167,916.00
43	200,051.41	32,135.41	2,975,373.63	0.00	167,916.00
44	200,051.41	32,135.41	3,007,509.04	0.00	167,916.00
45	200,051.41	32,135.41	3,039,644.45	0.00	167,916.00
46	200,051.41	32,135.41	3,071,779.86	0.00	167,916.00
47	200,051.41	32,135.41	3,103,915.27	0.00	167,916.00
48	200,051.41	32,135.41	3,136,050.68	0.00	167,916.00
49	200,051.41	32,135.41	3,168,186.09	0.00	167,916.00
50	200,051.41	32,135.41	3,200,321.50	0.00	167,916.00
51	200,051.41	32,135.41	3,232,456.91	0.00	167,916.00
52	200,051.41	32,135.41	3,264,592.32	0.00	167,916.00
53	200,051.41	32,135.41	3,296,727.73	0.00	167,916.00
54	200,051.41	32,135.41	3,328,863.14	0.00	167,916.00
55	200,051.41	32,135.41	3,360,998.55	0.00	167,916.00
56	200,051.41	32,135.41	3,393,133.96	0.00	167,916.00
57	200,051.41	32,135.41	3,425,269.37	0.00	167,916.00
58	200,051.41	32,135.41	3,457,404.78	0.00	167,916.00
59	200,051.41	32,135.41	3,489,540.19	0.00	167,916.00
60	200,051.41	15,027.41	3,504,567.60	0.00	185,024.00
61	200,051.41	15,027.41	3,519,595.01	0.00	185,024.00
62	200,051.41	15,027.41	3,534,622.42	0.00	185,024.00
63	200,051.41	15,027.41	3,549,649.83	0.00	185,024.00
64	200,051.41	0.00	3,541,192.24	8,457.59	208,509.00
65	200,051.41	0.00	3,532,734.65	8,457.59	208,509.00
66	200,051.41	0.00	3,524,277.06	8,457.59	208,509.00
67	200,051.41	0.00	3,515,819.47	8,457.59	208,509.00
68	200,051.41	0.00	3,505,943.88	9,875.59	209,927.00
69	200,051.41	0.00	3,496,068.29	9,875.59	209,927.00
70	200,051.41	0.00	3,486,192.70	9,875.59	209,927.00
71	200,051.41	0.00	3,476,317.11	9,875.59	209,927.00
72	200,051.41	0.00	3,458,249.52	18,067.59	218,119.00
73	200,051.41	0.00	3,440,181.93	18,067.59	218,119.00
74	200,051.41	0.00	3,422,114.34	18,067.59	218,119.00
75	200,051.41	0.00	3,404,046.75	18,067.59	218,119.00
76	200,051.41	0.00	3,376,349.16	27,697.59	227,749.00
77	200,051.41	0.00	3,348,651.57	27,697.59	227,749.00
78	200,051.41	0.00	3,320,953.98	27,697.59	227,749.00
79	200,051.41	0.00	3,293,256.39	27,697.59	227,749.00
80	200,051.41	0.00	3,254,239.80	39,016.59	239,068.00
81	200,051.41	0.00	3,215,223.21	39,016.59	239,068.00
82	200,051.41	0.00	3,176,206.62	39,016.59	239,068.00
83	200,051.41	0.00	3,137,190.03	39,016.59	239,068.00
84	200,051.41	0.00	2,981,918.44	155,271.59	355,323.00
85	200,051.41	0.00	2,826,646.85	155,271.59	355,323.00
86	200,051.41	0.00	2,671,375.26	155,271.59	355,323.00
87	200,051.41	0.00	2,516,103.67	155,271.59	355,323.00

Payment No.	Column #1 Basic Rent	Column #2 Contributions to Reserve Fund	Column #3 Accumulated Reserve Fund	Column #4 Reserve Fund Payments	Column #5 Cash Payments (Column #1 less Column #2 plus Column #4)
88	200,051.41	0.00	2,345,191.08	170,912.59	370,964.00
89	200,051.41	0.00	2,174,278.49	170,912.59	370,964.00
90	200,051.41	0.00	2,003,365.90	170,912.59	370,964.00
91	200,051.41	0.00	1,832,453.31	170,912.59	370,964.00
92	200,051.41	0.00	1,643,155.72	189,297.59	389,349.00
93	200,051.41	0.00	1,453,858.13	189,297.59	389,349.00
94	200,051.41	0.00	1,264,560.54	189,297.59	389,349.00
95	200,051.41	0.00	1,075,262.95	189,297.59	389,349.00
96	200,051.41	0.00	864,353.36	210,909.59	410,961.00
97	200,051.41	0.00	653,443.77	210,909.59	410,961.00
98	200,051.41	0.00	442,534.18	210,909.59	410,961.00
99	200,051.41	0.00	231,624.59	210,909.59	410,961.00
100	200,051.41	0.00	-0.00	231,624.59	431,676.00



A. During each Year of the first through sixth Extended Terms, the sum of \$370,000 per annum payable in arrears in equal quarterly installments of \$92,500.

B. During each Year of the remaining Extended Terms, the Fair Rental Value of the Property, as hereinafter defined.

C. During each Year of the first six Extended Terms, in addition to the amounts set forth in paragraph A above, Lessee shall pay Lessor Additional Rental as hereinbelow set forth. The term "Additional Rental" shall mean with respect to any Year of any such Extended Term, an amount equal to one percent (1%) multiplied by the difference between (i) the amount of Lessee's "gross sales", as hereinafter defined, in such Year, and (ii) the amount of Lessee's "gross sales" in the last Year of the Primary Term in which the K mart store was fully operational.

Said Additional Rental shall be paid on or before the thirtieth (30th) day following the end of each such Year. Lessee shall on or before the thirtieth (30th) day following the end of each such Year, deliver to Lessor a statement signed by an officer of Lessee certifying the true amount of the gross sales for (i) the last Year of the Primary Term, and (ii) such Year or lesser period most recently completed. The term "lesser period", as used herein, shall be any period beginning on the first (1st) day of any such Year and ending, by reason of the termination of this Lease, prior to the end of such Year. In the event that a period of less than twelve (12) months shall be so required to be included in any such statement, then the dollar amount of "gross sales" in the last Year of the Primary Term shall be proportionately decreased.

Lessor or its agent may inspect Lessee's record of gross sales annually, provided such inspection shall be made at Lessee's principal office within six (6) months after the statement of sales shall be delivered to Lessor 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 Premises or for legal proceedings in any court, at law or in equity, Lessor shall hold in confidence sales figures or other information obtained from Lessee's records.

The term "gross sales", as used herein, shall be the total sales of food, merchandise or services made by Lessee from the K mart store located on the demised premises, whether wholesale or retail, cash or credit, 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 Lessee, discounts on merchandise which shall be allowed to employees of Lessee, or merchandise which shall be issued in redemption of trading stamps, if any, which shall have been issued free to charge to Lessee'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 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 food, 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 automotive gasoline or diesel fuel; and,
- (f) The amount of any deposits (such as bottle return deposits) included in the sales price).

Nothing contained in this provision shall be construed as requiring Lessee to operate a K mart store at the Premises or preventing Lessee from exercising its rights of assignment or subletting under Article 18 of this Lease.

D. The term "Fair Rental Value" shall mean the rent at which the Premises as then developed or used for its highest and best use permitted by law would be leased for cash by a willing landlord not compelled to rent, to a willing tenant not compelled to lease, free and clear of all liens and encumbrances securing the payment of money, but subject to all takings previously made. If the Lessor and Lessee are unable to agree on the Fair Rental Value, it shall be determined in the same manner as provided for the determination of Fair Market Value in Section 34 of the Lease provided that the appraisers shall be instructed to determine Fair Rental Value in accordance with the definition contained in this Exhibit C.

EXHIBIT D

Teacher Retirement System of Texas  
1001 Trinity Street  
Austin, Texas 78701

Attention: Robert C. Davis  
Investment Officer

Double V Associates L.P.  
c/o Lawrence Kadish Real Estate  
666 Old Country Road  
Suite 500  
Garden City, New York 11530

RE: K mart Store; Vacaville, California

Gentlemen:

The undersigned hereby certifies to you that:

(i) the construction of the Improvements at the captioned project was completed on \_\_\_\_\_, 198\_;

(ii) the undersigned has paid, in full, the aggregate cost of the Improvements; and,

(iii) all building and other permits and certificates of occupancy, if any are required, have been obtained and all applicable zoning and use laws, ordinances, regulations, restrictions and environmental regulations have been complied with.

Very truly yours,

K MART CORPORATION

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

And: \_\_\_\_\_

# EXHIBIT B

EXHIBIT "B"

**Double V Associates, L. P.**  
**Calculation of Claim**

**Prepetition Rent Claim**

Last Rent Payment Date:	11/1/01
Date of Termination:	1/22/02 (lease rejection "as of" date)
Basic Rent:	Per Quarter: \$ 200,051.41; Per Day \$ 2,222.7934; Number of Days: 81
Unpaid Basic Rent:	\$ 180,046.27 (11/1/2001 through 1/22/02); Day Counting: 30/360
Accumulated Rent Reserve:	\$ 3,496,068.29
<b>Total Prepetition Rent Claim:</b>	<b>\$ 3,676,114.56</b>

**Future Rent Claim**

One Year's Basic Rent:		\$ 800,205.64
One Year's Additional Rent		
Taxes:	\$ 68,400 00	(\$ 5,700.00 Per Month, \$190 00 Per Day)
Insurance	2,207 40	(\$ 168.95 Per Month; \$5.63 Per Day)
CAM (common area maintenance):	5,160.00	(\$ 430.00 Per Month; \$ 14.33 Per Day)
Total:		<u>\$ 75,587.40</u>
Total Year's Rent		<u>\$ 875,793 04</u>
Remaining Term.	7.5250 Years	
<i>(after rejection date)</i>		
15% Limitation:	\$ 988,551 39	
Three Years' Rent:	\$ 2,627,379.12	
<b>Future Rent Claim:</b>	<b>\$ 988,551.39</b>	

# Double V Associates, L. P.

## Summary of Claim

### Prepetition Rent

Basic rent due from date of last payment through date of rejection \$ 180,046.27

Accumulated Reserve Fund. \$ 3,496,068.29

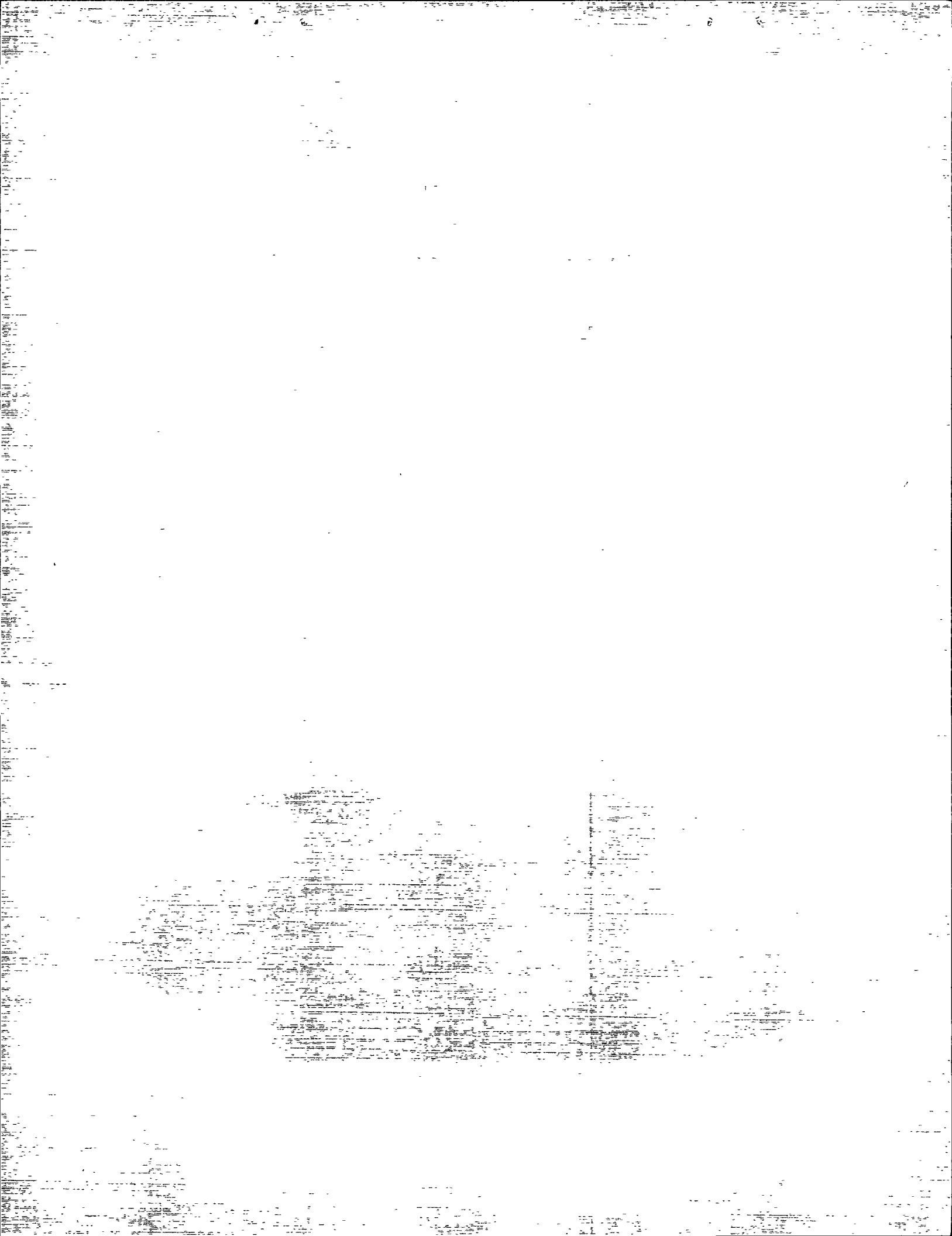
\$ 3,676,114.56

### Future Rent

\$ 988,551.39

**Total:**

\$ 4,664,665.95



SANFORD P. ROSEN & ASSOCIATES, P.C.

ATTORNEYS AT LAW  
747 THIRD AVENUE  
NEW YORK, NEW YORK 10017-2803

TELEPHONE (212) 223-1100

FACSIMILE (212) 223-1102

March 27, 2002

BY EXPRESS MAIL

Kmart Corp.  
c/o Trumbull Services  
PO Box 426  
Windsor, CT 06095

Re: Kmart Corporation, et al.  
Case No. 02 B2474 (Jointly Administered)

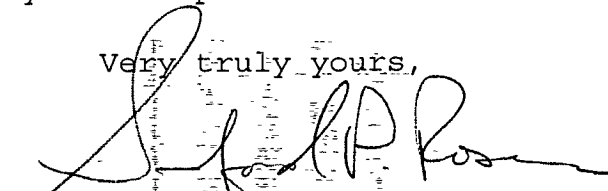
Dear Sir or Madam:

Enclosed are an original and copy of a proof of claim  
(against Kmart Corporation) of Double V Associates L.P.

Please acknowledge the receipt and filing of the  
original proof of claim by date-stamping the copy and returning  
it to us in the self-addressed postpaid envelope, which is also  
enclosed.

Thank you for your courtesy and cooperation.

Very truly yours,



Sanford P. Rosen

SPR/gda

Enclosures

cc: Michael A. Forastiere (w/o encs.)