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*United States Bankruptcy Court
Northern District of Illinois
Eastern Division*

Case Number 02-02474

Case Name Kmart

FILED
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS

JUN 12 2009

KENNETH S. GARDNER, CLERK
TEAM - B

Article 1

Dated June 5, 2009

Article 1

Definitions, Rules of Interpretation, and Computation of Time

A. Scope of Definitions

For purposes of this Plan, except as expressly provided or unless the context otherwise requires, all capitalized terms not otherwise defined shall have the meanings ascribed to them in Article 1.B of this Plan. Any term used in this Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules.

B. Definitions

1.1 "2001 Retention Program" means that certain retention program instituted by the Debtors in December 2001 pursuant to which a total of \$23.89 million was paid to 24 senior managers in the form of forgiveness loans.

2

1.2 "Administrative Claim" means a Claim for payment of an administrative expense of a kind specified in section 503(b) of the Bankruptcy Code and entitled to priority pursuant to section 507(a)(1) of the Bankruptcy Code, including, but not limited to, DIP Facility Claims, the actual necessary cost and expenses, incurred on or after the Petition Date, of preserving the Estates and operating the business of the Debtors, including wages, salaries or commissions for services rendered after the commencement of the Chapter 11 Cases, Professional Claims, Key Ordinary Course Professionals Claims, all fees and charges assessed against the Estates under Chapter 123 of title 28, United States Code, and all Allowed Claims (including reclamation claims) that are entitled to be treated as Administrative Claims pursuant to a Final Order of the Bankruptcy Court under section 546(c)(2)(A) of the Bankruptcy Code.

1.3 "Administrative Claim Bar Date" means the deadline for filing proofs or request for payment of Administrative

3

claims, which shall be forty-five (45) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court and except with respect to Professional Claims and Key ordinary Course Professional Claims, which shall be subject to the provision of Article 10.2 hereof.

- ✓ 1.4 "ADR Procedures" means any alternative dispute resolution procedures approved in the following orders.
- (i) Order Approving Procedures for (A) liquidating and settling personal Injury Claims Through Direct Negotiations and/or Alternative Dispute Resolution and/or (B) Modifying the Automatic Stay to permit Certain Litigation with Respect to Such Claims to Proceed dated July 17, 2002; (ii) Order Pursuant to 11 U.S.C. § 105(a) to Modify Personal Injury Claims Resolution Procedures to Require the Participation of Third Party Indemnitors and Insurance Carriers in Mediations and Arbitrations of Claims dated August 29, 2002; and (iii) Order Pursuant to 11 U.S.C. §§ 105, 363, 502, and 503 and Rule 9019(b) of the Federal Rules of Bankruptcy Procedure Authorizing Debtors (A)

4

to Compromise or Settle Certain Peticion Claims Without Further Court Approval and (B) to Establish Alternative Dispute Resolution Procedures for Disputed Claims dated January 28, 2003.

1.5 "Affiliate Debtors" means all the Debtors other than Kmart.

1.6 "Affiliates" has the meaning given such term by section 101 (2) of the Bankruptcy Code.

1.7 "Allowed Claim or Allowed Interest" means a Claim or any portion thereof, or an Interest or any portion thereof, (a) that has been allowed by a Final Order of the Bankruptcy Court (or such other Court or forum as the Reorganized Debtors and the holder of such Claim or Interest agree may adjudicate such Claim or Interest and objections thereto), or (b) as to which, on or by the Effective Date, (i) no proof of claim or interest has been filed with the Bankruptcy Court and (ii) the liquidated and noncontingent amount of which is scheduled, other than a Claim or Interest that is

5

Scheduled at zero, in an unknown amount, or as disputed, or (c) for which a proof of claim or interest in a liquidated amount has been timely filed with the Bankruptcy Court pursuant to the Bankruptcy Code, any Final Order of the Bankruptcy Court or other applicable bankruptcy law, and as to which either (i) no objection to its allowance has been filed within the periods of limitation fixed by the Plan, the Bankruptcy Code or by any order of the Bankruptcy Court, or (ii) any objection as to its allowance has been settled or withdrawn or has been denied by a Final Order, or (d) is reflected in a schedule of Allowed Claims if any, filed from time to time with the Bankruptcy Court by the Debtors or the Reorganized Debtors, or (e) that is expressly allowed in a liquidated amount in this Plan.

1.8 "Allowed Class ... Claim" or Allowed ... Interest" means an Allowed Claim or an Allowed Interest in a specific class.

1.9 "Articles of Incorporation and Bylaws" means the Articles of Incorporation and Bylaws (or other similar documents) of

6

New Holding Company, New Operating Company and the other Reorganized Debtors, in substantially the forms attached hereto as Exhibit A, Exhibit B, and Exhibit C, respectively, which Articles of Incorporation and Bylaws (or other similar documents) shall be in a form acceptable to the Plan Investors and reasonable acceptable to the Creditors' Committees.

1.10 "Avoidance Claims" means Causes of Action against persons arising under any of sections 510, 547, 548, 549, 550, and 551 (to the extent the latter two sections are applicable to the statutory sections referred to in this Article 10 of the Bankruptcy Code, or under similar or related state or federal statutes and Common law, including fraudulent transfer laws, whether or not litigation has been commenced as of the Confirmation Date to prosecute such Avoidance Claims.

1.11 "Ballot" means each of the Ballot forms that are distributed with the Disclosure Statement to Claimholders included in Classes that are impaired

7

under this Plan and entitled to vote under Article VI of this Plan to accept or reject this Plan.

1.12 "Bankruptcy Code" means the Bankruptcy Reform Act of 1978, as amended and codified in title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as in effect on the date hereof.

1.13 "Bankruptcy Court" means The United States Bankruptcy Court for the Northern District of Illinois (Eastern Division) or such other court as may have jurisdiction over the Chapter 11 Cases.

1.14 "Bankruptcy Rule" means the federal Rules of Bankruptcy procedure and the Official Bankruptcy Forms, as amended, the Federal Rules of Civil Procedure, as amended, as applicable to the Chapter 11 Cases or proceedings therein, and the local Rules of the Bankruptcy Court, as applicable to the Chapter 11 Cases or proceedings herein, as the case may be.

8

1.15 "Bar Date" means the deadlines set by the Bankruptcy Court pursuant to the Bar Date Orders or other Final Order for filing proofs of claims in the Chapter 11 cases. For prepetition claims, the Bar Date was July 31, 2002, except that the Bar Date with respect to certain personal injury and related claims was January 22, 2003.

1.16 "Bar Date Orders" means the order entered by the Bankruptcy Court on March 26, 2002, which established the July 31, 2002, Bar Date and the order entered by the Bankruptcy Court on December 19, 2002, which established the January 22, 2003 Supplemental Bar Date.

1.17 "Big Beaver Cagnas" means Big Beaver of Cagnas Development Corporation, a Michigan corporation, debtor-in-possession in Case No. 02-02476 pending in the Bankruptcy Court.

1.18 "Big Beaver Development" means Big Beaver Development Corporation, a Michigan Corporation, debtor-in-possession in Case No. 02-02473.

9

pending in Bankruptcy Court.

1.19 "Big Beaver Florida" means Big Beaver of Florida Development, LLC, a Florida limited liability Company, debtor-in-possession in Case No. 02-02475 pending in the Bankruptcy Court.

1.21 "Bluelight" means Bluelight, Com LLC, a Delaware limited liability Company, debtor-in-possession in Case No. 02-02467 pending in the Bankruptcy Court.

1.22 "Business Day" means any day, excluding Saturdays, Sundays and "legal holidays" as defined in Bankruptcy Rule 9006(a), on which commercial banks are open for business in New York City.

1.23 "Cash" means legal tender of the United States of America and equivalents thereof.

1.24 "Causes of Action" means any and all actions, proceedings, causes of action, suits, accounts, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment

10

and claims, whether known, unknown, reduced to judgement, not reduced to judgement, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly or derivatively, in law, equity or otherwise including Avoidance Claims and Trust Claims, unless otherwise waived or released by the Debtors or the Reorganized Debtors.

1.25 "Chapter 11 Cases" means the Chapter 11 cases of the Debtors pending in the Bankruptcy Court and being jointly administered with one another under Case No. 02-02474, and the phrase "Chapter 11 Cases" when used with reference to a particular Debtor shall mean the particular case under Chapter 11 of the Bankruptcy Code commenced by such Debtor in the Bankruptcy Court.

1.26 "Claims" means a claim against one of the Debtors (or all or some of them) whether or not asserted, as defined in section 101 (5) of the Bankruptcy Code.

1.27 "Claimholder" means a holder of a claim.

11

1.28 "Claim Agent" means Trumbull Bankruptcy Services, P.O. Box 426, Windsor Connecticut 06095, Attn: Kmart Balloting Center.

1.29 "Claims/Interests Objection Deadline" means that day which is 180 days after the Effective Date (unless day is not a Business Day, in which case such deadline shall be the next Business Day thereafter), as the same may be from time to time extended by the Bankruptcy Court, without further notice to parties-in-interest.

1.30 "Class" means a Category of Claimholders or Interestholders described in Article III of this Plan.

1.31 "Confirmation Date" means the date of entry of the Confirmation Order.

1.32 "Confirmation Hearing" means the hearing before the Bankruptcy Court held to consider Confirmation of this Plan and related matters under section 1128 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

12

1.33 "Confirmation Order" means the order entered by the Bankruptcy Code, . . . Confirming the Plan.

1.34 "Continuing Indemnification Rights" means those Indemnification Rights held by any Indemnitee who is a Released Party and serves as a director, officer or employee (or in any similar capacity) of the Reorganized Debtors immediately following the occurrence of the Effective Date together with any Indemnification Rights held by an Indemnitee on account of events occurring on or after the Petition Date, provided that no person who is or becomes the subject of a Trust Claim shall have any Continuing Indemnification Rights with respect to such Trust Claim.

1.35 "Convenience Class Election" means an election by a holder of a Trade Vendor/Lease Rejection Claim or Other Unsecured Claim on its ballot to be treated as a General Unsecured Convenience Claim.

1.36 "Coolidge" means The Coolidge Group, N/K/a TC Group 1, LLC a Michigan limited

13

liability Company, debtor-in-possession in Case No. 02-02469 pending in the Bankruptcy Court.

1.37 "Creditors Committees" means collectively, the Unsecured Creditors' Committee and the Financial Institutions' Committee appointed pursuant to section 1102(a) of the Bankruptcy Code in the Chapter 11 Cases.

1.38 "Cure" means the payment or other honor of all obligations required to be paid or honored in connection with assumption of an executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, including (a) the cure of any non-monetary defaults to the extent required, if at all, pursuant to section 365 of the Bankruptcy Code, and (b) with respect to monetary defaults, the distribution within a reasonable period of time following the Effective Date of Cash, or such other property as may be agreed upon by the parties or order by the Bankruptcy Court, with respect to the assumption (or assumption and assignment) of an executory contract or unexpired lease pursuant to section 365(b) of the Bankruptcy Code, in

14

an amount equal to all unpaid monetary obligations or such other amount as may be agreed upon by the parties, under such executory contract or unexpired lease, to extent such obligations are enforceable under the Bankruptcy Code and applicable non-bankruptcy law; provided further, that in the event that a debtor assumes an unexpired lease or executory contract, any guarantee (i) provided by another debtor related to such unexpired lease or executory contract, or (ii) in connection with any industrial revenue bonds, shall be deemed Reinstated under the Plan if the failure of such guarantee to remain in force and effect would constitute a default under such assumed unexpired lease or executory contract or such industrial revenue bonds.

1.39 "Cure Claim" has the meaning ascribed to it in Article 8.2 of this Plan

1.40 "Cure Claim Submission Deadline" has the meaning ascribed to it in Article 8.2 of this Plan

15

1.41 "Debtor" or "Debtors" means, individually, any of Kmart or the Affiliate Debtors and, collectively, all of Kmart and the Affiliate Debtors.

1.42 "Designated Trust Recoveries" means any payments related to the Reorganized Debtors pursuant to Article 11.3(d) of this Plan, including any payments related to the Reorganized Debtors' continuing obligation to turn over funds repaid to them on account of loans made pursuant to the 2001 Retention Program

1.43 "DIP Agent" means an administrative agent for the DIP Lenders as defined in the DIP Credit Agreement.

1.44 "DIP Credit Agreement" means that Certain Revolving Credit and Guaranty Agreement, dated as of January 23, 2002 as amended, supplemented or otherwise modified from time to time, and all documents executed in connection therewith, among the Debtors, the DIP Agent, and the DIP Lenders, which was executed by the Debtors in connection with the DIP Facility.

16

1.45 "DIP Facility" means the debtor-in-possession secured financing facility provided to the Debtors by the DIP Lenders pursuant to the DIP Credit Agreement as authorized by the Bankruptcy Court pursuant to the DIP Facility Order.

1.46 "DIP Facility Claim" means all Administrative Claims of the DIP Agent and the DIP Lenders arising under or pursuant to the DIP Facility, including, without limitation, principle and interest on the DIP Facility, plus all reasonable fees and expenses (including professional fees and expenses) arising under the DIP Facility.

1.47 "DIP Facility Order" means, collectively, (i) the interim order that was approved by the Bankruptcy Court from the bench on January 25, 2002 and entered by the Bankruptcy Court on January 25, 2002, (ii) the final order that was approved by the Bankruptcy Court from the bench on March 6, 2002 and entered by the Bankruptcy Court on March 6, 2002, authorizing and approving the DIP Facility and the agreement related thereto, and (iii) any and all orders

17

entered by the Bankruptcy Court authorizing and approving amendments to the DIP Credit Agreement.

1.48 "DIP Lenders" means the lenders from time to time party to the DIP Credit Agreement.

1.49 "Disallowed Claims" or "Disallowed Interest" means a Claim or any portion thereof, or an Interest or any portion thereof, that (a) has been disallowed by a Final Order, (b) is scheduled as zero or as contingent, disputed or unliquidated and as to which a proof of claim or interest bar date has been established but no proof of claim or interest has been timely filed or deemed filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law, or (c) is not scheduled and as to which a proof of claim or interest bar date has been set but no proof of claim or interest has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law.

1P

1.50 "Disbursing Agent" means New Holding Company or New Operating Company, or any Person designated by them, after consultation with the Creditors Committee, to serve as a disbursing agent under Article 9.3 of this Plan.

1.51 "Disclosure Statement" means the written disclosure statement that relates to this Plan, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017, as such disclosure statement may be amended, modified or supplemented from time to time.

1.52 "Disputed Claim" or "Disputed Interest" means a Claim or any portion thereof, or an Interest or any portion thereof, that is neither an Allowed Claim nor a Disallowed Claim, or an Allowed Interest or a Disallowed Interest, as the Case may be, and includes, without limitation, Claims of Interest that (a) have not been Scheduled by the Debtors or have been Scheduled at zero, or Interest are the subject of a proof of claim or a proof of interest in the Bankruptcy Court, (b) are the subject of a

19

proof of claim or interest that differs in nature, amount or priority from the schedules, or (c) are the subject of an objection filed with the Bankruptcy Court, which has not been withdrawn or overruled by a Final Order of the Bankruptcy Court.

1.53 "Distribution Date" means the date, selected by the Debtors or Reorganized Debtors, occurring as soon as practicable after the Administrative Claims Bar Date (unless determined by the Reorganized Debtors, after consultation with the Trustee, that an earlier date may be used) and in any case no later than June 30, 2003, upon which distributions to holders of Allowed Claims and Allowed Interest entitled to receive distribution under this Plan shall commence.

1.54 "Distribution Reserve" means the New Holding Company Common Stock for distribution to Claimholders in the Debtors' Chapter 11 Cases to be reserved pending allowance of disputed claims in accordance with Article 9.8 of this Plan.

20

1.55 "Effective Date" means the business day determined by the Debtors on which all conditions to the consummation of this Plan set forth in Article 13.2 of this Plan have been either satisfied or waived as provided in Article 13.3 of this Plan and is the day upon which this Plan is substantially consummated.

1.56 "Employee-Related Agreements" means those agreements between any of the Debtors and any of their employees or any entity acting on behalf of their employees.

1.57 "Equity Committee" means the Official Committee of Equity Security Holders appointed pursuant to section 1102(a) of the Bankruptcy Code in the Chapter 11 Cases, as the membership thereof may change from time to time.

1.58 "Estates" means the Bankruptcy estates of the Debtors created pursuant to section 541 of the Bankruptcy Code.

1.59 "Exchange Act" means the Security Exchange Act of 1934, as now in effect or hereafter amended.

21

1.60 "Exhibit" means an exhibit annexed to either this Plan or as an appendix to the Disclosure Statement.

1.61 "Exhibit Filing Date" means the date on which exhibits to this Plan or the Disclosure Statement shall be filed with the Bankruptcy Court, which date shall be at least seven days prior to the Voting Deadline or such later date as may be approved by the Bankruptcy Court without further notice.

1.62 "Existing Common Stock" means shares of common stock of Kmart that are authorized, issued and outstanding prior to the Effective Date.

1.63 Existing Securities means, collectively, the Prepetition Notes, the Trust Preferred Securities, and the Existing Common Stock.

1.64 "Exit Financing Facility" means a new financing facility, a copy of which will be attached hereto as Exhibit D-2 pursuant to the terms of (a) that certain Commitment Letter, dated

22

January 13, 2003, between Kmart, as borrower, and General Electric Capital Corporation, Fleet Retail Finance, Inc., and Bank of America, N.A. as initial lenders, as the same may be amended, modified, or supplemented from time to time, a copy of which is attached hereto as Exhibit D-1 and (b) any and all additional documents related thereto filed in accordance with Article 7.12 of this Plan.

1.65 "Face Amount" means (a) when used in reference to a disputed or Disallowed Claim, the full stated liquidated amount claimed by the claimholder in any proof of claim timely filed with the Bankruptcy Court or otherwise deemed timely filed by any Final Order of the Bankruptcy Court or other applicable bankruptcy law, and (b) when used in reference to an Allowed Claim, the Allowed amount of such Claim.

1.66 "Final Order" means an order or judgement, the operation or effect of which has not been stayed, reversed or amended and as to which order or judgement (or any revision, modification

23

or amendment thereof) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing was filed or if filed remains pending.

1.67 "Financial Institutions' Committee" means the Official Committee of Financial appointed pursuant to section 1102(a) of the Bankruptcy Code in the Chapter 11 Cases, as the membership thereof may change from time to time.

1.68 "General Unsecured Convenience Claim" means (i) a Trade Vendor/Lessee Rejection Claim or Other Unsecured Claim if, in either instance, the Allowed amount of such Claim is greater than \$30,000 and the holder of such Claim has agreed to reduced the allowed amount of its Claim to \$30,000 or less and made the Convenience Class Election on the Ballot within the time fixed by the Bankruptcy Court.

1.69 "Holdback Amount" means the Amount equal to 10% of fees billed to the Debtors in a given month to the extent

24

retained by the Debtors as of the Effective date in a given month to the extent retained by the Debtors as of the Effective Date as a holdback on payment of Professional claims pursuant to the Professional Fee order. The Holdback Amount shall not be considered property of the Debtors, the Reorganized Debtors, or the Estates.

1.70 "Holdback Escrow Account" means the escrow account established by the Disbursing Agent into which Cash equal to the Holdback Amount shall be deposited for the payment of Allowed Professional Claims to the extent not previously paid or disallowed.

1.71 "Impaired" refers to any claim or interest that is impaired within the meaning the meaning of section 1124 of the Bankruptcy Code.

1.72 "Indemnification Rights" means any obligation or rights of the Debtors to indemnify, reimburse, advance, or contribute to the losses, liabilities,

25

or expenses of an Indemnitee pursuant to the Debtor's certificate of incorporation, bylaws policy of providing employee indemnification, applicable law, or specific agreement in respect of any claims, demands, suits causes of action or proceedings against an Indemnitee based upon any act or omission related to an Indemnitee's service with, for, or on behalf of the Debtors.

1.73 "Indemnitee" means all present and former directors, officers, employees, agents or representatives of the Debtors who are entitled to assert Indemnification Rights.

1.74: "Insurance Coverage" shall have the meaning ascribed to it in Article 12.9 hereof.

1.75 "Insured Claim" means any claim to the extent such claim arises prior to the Petition Date from an incident or occurrence that is covered under any of the Debtors insurance policies, but solely to the extent such

26

Claim is covered by such insurance policies, including any directors' and officers' liability policies that provide entity coverage to the Debtors.

1.76 "Intercompany Claim" means a claim by a Debtor, an Affiliate of a Debtor, or a Non-Debtor Affiliate against another Debtor, Affiliate of a Debtor, or Non-Debtor Affiliate.

1.77 "Intercompany Executory Contract" means an executory contract solely between two or more Debtors or an executory contract solely between one or more Debtors and one or more Non-Debtor Affiliates.

1.78 "Intercompany Unexpired Leases" means an unexpired lease solely between two or more Debtors or an unexpired lease solely between one or more Debtors and one or more Non-Debtor Affiliates.

1.79 "Interest" means the legal equitable contractual and other rights of any Person with respect to Existing Common stock, Other Interest, or any other equity securities of or ownership interest in the Affiliate Debtors.

27

1.80 "Interestholder" means a holder of Interest.

1.81 "Investment Agreement" means that certain Investment Agreement dated as of January 24, 2003 between the Plan Investors and Kmart, a copy of which is attached hereto as Exhibit E as the same may be amended, modified or supplemented from time to time.

1.82 "Key Ordinary Course Professional" means those certain persons identified as key ordinary course professionals by the Debtors pursuant to the Ordinary Course Professional Order.

1.83 "Key Ordinary Course Professionals Claim" means an Administrative Claim of a Key Ordinary Course Professional for compensation for services rendered or reimbursement of cost, expenses or other charges and disbursements in an amount in excess of \$25,000 for any month relating to services rendered or expenses incurred after the Petition Date and prior to and including the Effective Date.

28

1.84 "Kmart" means Kmart Corporation, a Michigan Corporation debtor-in-possession in Case No. 02-02474.

1.85 "Kmart Amsterdam" means Kmart Amsterdam, NY Distribution Center, Inc., a Michigan Corporation, debtor-in-possession in Case No. 02-02479 pending in the Bankruptcy Court.

1.86 "Kmart Financing" means Kmart Financing I, a Delaware trust debtor-in-possession in Case No. 02-02471 pending in the Bankruptcy Court.

1.87 "Kmart Holdings" means Kmart Holdings, Inc., a Delaware corporation, debtor-in-possession in Case No. 02-02478 pending in the Bankruptcy Court.

1.88 "Kmart-IN" means Kmart of Indiana, an Indiana partnership, debtor-in-possession in Case No. 02-02463 pending in the Bankruptcy Court.

1.89 "Kmart MI" means Kmart of Michigan, Inc., a Michigan Corporation debtor-in-

29

possession Case No. 02-02481 pending in Bankruptcy Court.

1.90 "Kmart-MPS" means Kmart Michigan Property Services, LLC, a Michigan limited liability company, debtor-in-possession in Case No. 02-02470 pending in Bankruptcy Court.

1.91 "Kmart-NC" means Kmart of North Carolina, LLC, a North Carolina limited liability company, debtor-in-possession in Case No. 02-02465 pending in the Bankruptcy Court.

1.92 "Kmart-PA" means Kmart of Pennsylvania, LP, a Pennsylvania limited partnership, debtor-in-possession in Case No. 02-02464 pending in The Bankruptcy Court.

1.93 "Kmart-TX" means Kmart of Texas, LP, a Texas limited partnership, debtor-in-possession in Case No. 02-02466 pending in Bankruptcy Court.

P 30

1.94 "Kmart Creditor Trust" means the trust created pursuant to Article 11.3 of this Plan

1.95 "Management Compensation Plan" means an executive emergence and longterm incentive program approved by the board of directors of the Reorganized Debtors and implemented for the benefit of the reorganized Debtors' employees, members of management, and directors and designed to (i) recognize the experience, qualifications, and proven track record of the Reorganized Debtors' management team and (ii) provide incentives for the beneficiaries thereof to maximize value for stockholders after the Effective Date.

1.96 "New Holding Company" means a corporation to be created pursuant to the terms of the Plan, or, in the discretion of Kmart's board of directors after consultation with the creditors committee, a Reorganized Debtor, to hold 100% of the New Operating Company common stock on and after the Effective Date.

1.97 "New Holding Company Common Stock" means the shares of common stock of New Holding Company authorized under Article 7.8 of this

31

Plan and under the articles of Incorporation of New Holding Company.

1.98 "New Holding Company Preferred Stock" means the shares of preferred stock of New Holding Company authorized under Article 7.8 of this Plan and under the articles of incorporation of New Holding Company.

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~~plan and under the articles of incorporation of New Holding Company.~~

1.99 "New Operating Company" means a Corporation or other person to be created Pursuant to the Terms of this Plan or in the discretion of the Kmart's board of directors after consultation with the Creditors Committee and the Plan Investors, a Reorganized Debtor, to be wholly-owned, directly or indirectly, by New Holding Company.

1.100 "New Operating Company Common Stock (or such other certificate designating ownership as are appropriate) of New Operating Company authorized under Article 7.1 of this Plan and under the Article of incorporation of New Operating Company.

7.101 "Non-Judicial Claims" means the perpetuation Note Claims, the Trade Vendor/Lease Rejection Claims, the Trust Preferred Obligations, and other Unsecured Claims.

1.102 "Ordinary Course Professional Order" means the Bankruptcy Court's Order Pursuant to 11 U.S.C. §§ 105(a) 327(c) and 331 Authorizing Retention of Professionals Utilized by the

P 33

Debtors in the Ordinary Course of Business
(Docket No 682).

1.103 "Other Executory Contracts or Unexpired Lease" means all executory contracts or unexpired leases, other than Employee - Related Agreements, Intercompany Executory Contracts, and Intercompany unexpired Leases to which any of the Debtor are a party.

1.104 "Other Interest" means all options, warrants, call rights, puts, awards, or other agreements to acquire Existing Common Stock.

1.105 "Other Priority Claim" means a Claim entitled to priority pursuant to section 507 (a) of the Bankruptcy Code other than a priority Tax Claim or an Administrative Claim.

1.106 "Other Unsecured Claim" means subject to Article 5.6 hereof, a Claim that is not an Administrative Claim, General Unsecured Convenience Claim, Intercompany Claim, Other Priority Claim, PBGC Claim, Priority Tax Claim, Petitioner Lender Claim, Petitioner Note Claim, Secured Claim, Subordinated Securities Claim, Trade Vendor/Lease Rejection Claim, or Trust Preferred Obligation.

284

1.107 "Other Unsecured Claim Cash Payment Amount" means the cash to be paid to all holders of Allowed Other Unsecured Claims on the third anniversary of the Effective Date (or if such date is not a Business Day, the next Business Day), in an amount equal to (i) the product of (a) the estimated, mid-range value (as set forth in the Disclosure Statement) of the New Holding Company Common Stock to be distributed to holders of Trade Vendor/Lease Rejection Claims multiply by (b) a fraction, the numerator of which is equal to the aggregate amount of all Allowed Trade Vendor/Lease Rejection Claims and allowed Other Unsecured Claims, plus (ii) an amount equivalent to interest on the amount calculated pursuant to the preceding clause at an annual rate of 4% from and after the Effective Date through and including the third anniversary of the Effective Date. The Other Unsecured Claim Cash Payment Amount shall be subject to such other terms and conditions as may be necessary and appropriate to effectuate payment thereof or to comply with applicable law.

1.108 "Other Unsecured Claim Election" means an election by an Other Unsecured Claimholder,

P 35

either on its Ballot or appropriate election form provided by the Debtors, to be treated as a Trade Vendor/Lease Rejection Claimholder.

1.109 "Other Unsecured Claim Estimation Procedure" means a procedure approved by the Bankruptcy Court providing for the expedited estimation, for distribution purposes, of Other Unsecured Claims held by Other Unsecured Claimholders who make the Other Unsecured Claims Election.

1.110 "PBGC" means the Pension Benefit Guaranty Corporation.

1.111 "PBGC Claims" means all Claims of the PBGC against any of the Debtors.

1.112 "Periodic Distribution Date" means (a) the Distribution Date, and (b) thereafter, the first Business Day occurring on or immediately after each subsequent October 1st, January 1st, April 1st, and July 1st.

1.113 "Person" means an individual, Corporation, Partnership, joint Venture, association, joint stock Company, limited liability Company, limited liability partnership, trust, estate, unincorporated organization, governmental unit,

P 36

(as defined in section 101(27) of the Bankruptcy Code) or other entity.

1.114 "Petition Date" means January 22, 2002 the date on which the Debtors filed their petition for relief in the Bankruptcy Court commencing the Chapter 11 Cases.

1.115 "Plan" means this joint plan of reorganization for the resolution of outstanding Claims and Interest in the Chapter 11 Cases, as herein proposed by the Debtors, including all supplements, appendices or schedule hereto, either in their present form or as the same may be further altered, amended, or modified from time to time in accordance with the Bankruptcy Code and Bankruptcy Rules.

1.116 "Post-Effective Date Committee" has the meaning ascribed to it in Article 15.5 of this Plan.

1.117 "Plan Investors" means ESL Investments Inc., a Delaware Corporation, and Third Avenue Trust, on behalf of certain of its investment series.

P. 37

1.118 "Plan Investment Claim" means all Administrative Claims of the Plan Investors Under the Investment Agreement, including, without limitation, all fees and expenses (including Profession fees and expenses) arising under the Investment Agreement.

1.119 "Prepetition Agent" means J.P. Morgan Chase Bank (f/k/a, The Chase Manhattan Bank) as administrative agent under the Prepetition Credit Agreement.

1.120 "Prepetition Credit Agreement" means, collectively, (a) that certain Three Year Credit Agreement, dated as of December 6, 1999, by and among Kmart, J.P. Morgan Securities, Inc. (f/k/a Chase Securities, Inc.) as lead Arranger and Book Manager, J.P. Morgan Chase Bank (f/k/a The Chase Manhattan Bank), as Administrative Agent, Bank of America, National Association, as Syndicated Agent, BankBoston, N.A. as Co-Documentation Agent, and Bank of New York, as Co-Documentation Agent, as amended, supplemented or otherwise modified from time to time, and all documents executed in connection therewith, and (b) that certain 364 Day Credit Agreement, dated as of November 13, 2001, by and among Kmart,

P 38

JP Morgan Chase Bank (P/K/a the Chase Manhattan Bank), as Administrative Agent, Credit Suisse First Boston, Fleet National Bank, and the Bank of New York, as Co-Documentation Agents, as amended, supplemented or otherwise modified from time to time, and all documents executed in connection therewith.

1.121 "Prepetition Lender Claims" means all claims arising under or pursuant to the Prepetition Credit Agreement.

1.122 "Prepetition Lenders" means the lenders from time to time party to the Prepetition Credit Agreements.

1.123 "Prepetition Note Claims" means all claims arising under or pursuant to any of the Prepetition Notes or the indentures governing the Prepetition Notes.

1.124 "Prepetition Noteholder Shares" means 25,008,573 shares of New Holding Company Common Stock.

1.125 "Prepetition Notes" means, collectively, (a)(i) the 12.5% Notes due March 1, 2005 in

P. 39

the aggregate principle amount of \$100,000,000; (ii) the 8.125% Notes due December 1, 2006 in the aggregate principle amount of \$200,000,000; (iii) the 7.75% Notes due October 1, 2012 in the aggregate principle amount of \$157,257,000; (iv) the 8.25% Notes due January 1, 2022 in the aggregate principle amount of \$68,055,000; (v) the 8.375% Notes due July 1, 2022 in the aggregate principle amount of \$85,550,000; (vi) the 7.95% Notes due February 1, 2023 in the aggregate principle amount of \$259,800,000; and (vii) the Series C Medium Term Notes and Series D Medium Term Notes in the aggregate principle amount of \$222,935,000, in each case issued by Kmart pursuant to that certain indenture dated as of February 1, 1985, between Kmart and the Bank of New York, as original indenture trustee, as hereafter succeeded in that capacity by Wilmington Trust Company as successor indenture trustee, as such indenture may have been amended, supplemented, or otherwise modified from time to time, including, but not limited to, that certain First Supplemental Indenture dated as of March 1, 1991; (b) (i) the 8.375% Notes due December 1, 2004 in the aggregate principle amount of \$300,000,000; (ii) the 9.375% Notes due February 1, 2006 in the

P 40

Aggregate principal amount of \$400,000,000; and
(iii) the 9.875% Notes due June 15, 2008 in the
Aggregate principal amount of \$430,000,000;
in each case issued by Kmart pursuant to that
certain indenture dated as of December 13, 1999,
between Kmart and the Bank of New York, as
original indenture trustee, as hereafter
succeeded in that capacity by Wilmington
Trust Company as successor indenture trustee,
as such indenture may have been amended,
supplemented or otherwise modified from
time to time, included, but not limited to,
that certain First Supplemental indenture
dated as of December 13, 1999; that certain
Second Supplemental indenture dated as of
January 30, 2001 and that certain third
Supplemental indenture dated as of June 19,
2001; (C) the Commercial Development Revenue
Refunding Bonds (Kmart Corporation Project)
Series 1944 in the aggregate outstanding
principal amount of \$1,800,000.00, issued
under or in connection with the trust in-
denture dated as of November 1, 1994 by and
between The County Commission of Harrison
County, as issuer, and JP Morgan Trust,
Company National Association (as successor
trustee), as indenture trustee, as hereafter
succeeded in that capacity by Wilmington

41

Trust Company as successor indenture trustee, and all of the rights, title and interest of Harrison County in and under the Loan Agreement and the Promissory Note made between Kmart and the County Commission of Harrison County; and (d) the industrial Development Revenue Refunding Bonds (Kmart Corporation Project) Series 1994 in the aggregate outstanding principal amount of \$2,375,000.00 issued under or in connection with the trust indentures dated as of October 1, 1994 by and between The Industrial Development Authority of the City of Liberty, Missouri, as issuer, and UMB Bank, N.A. as indenture trustee, and all of the rights, title, and interest of The Industrial Development Authority of the City of Liberty, Missouri in and under the Loan Agreement and the Promissory Note made between Kmart and the Industrial Development Authority of the City of Liberty, Missouri.

1.126 "Priority Tax Claim" means a claim entitled to priority pursuant to section 507(a)(8) of the Bankruptcy Code.

42

1.127 "Pro rata" means at any time, the proportion that the Face Amount of a Claim in a particular Class or Classes (ii) The aggregate Face Amount of all Claims (including disputed Claims, but excluding Disallowed Claims) unless this Plan provides otherwise.

128 "Professionals" means those persons retained in the Chapter 11 cases by separate Bankruptcy Court orders pursuant to sections 327 and 1103 of the Bankruptcy Code or otherwise; provided, however, that Professionals does not include those persons retained pursuant to the Ordinary Course Professional Order.

1.129 "Professional Claim" means and Administrative Claim of a Professional for Compensation for services rendered or reimbursement of cost, expenses or other charges and disbursements incurred relating to services rendered or expenses incurred after the Petition Date and prior to and including the Effective Date.

1.130 "Professional Fee Order" means the order entered by the Bankruptcy Court on January 25, 2002, authorizing the interest

43

1.131 "Registration Rights Agreement" means the agreement, a form of which will be attached to this Plan on or Prior to the Exhibit Filing Date as Exhibit B, whereby New Holding Company will be obligated to register certain shares of New Holding Company Stock pursuant to the terms and conditions of such agreement.

1.132 "Reinstated or Reinstatement" means (a) leaving unaltered the legal, equitable and Contractual rights to which a Claim entitles the Claimholder so as to leave such Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code, or (b) notwithstanding any contractual provision or applicable law that entitles the Claimholder to demand or receive accelerated payment of such Claim after the occurrence of a default (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365 (b)(2) of the Bankruptcy Code; (ii) reinstating the maturity of such Claim as such maturity existed before such default; (iii) compensating the Claimholder for any damages incurred as a result of any reasonable

44

reliance by such Claimholder on such contractual provision or such applicable law; and (iv) not otherwise altering the legal, equitable or contractual rights to which such Claim entitles the Claimholder; provided, however, that any contractual rights that does not pertain to the payment when due of Principle and interest on the obligation on which such Claim is based, including, but not limited to financial covenant ratios, negative pledge covenants, covenants or restrictions on merger or consolidation, "going dark" provisions, and affirmative covenants regarding corporate existence prohibiting certain transactions or actions contemplated by this Plan, or conditioning such transactions or actions on certain factors, shall not be required to be cured or reinstated in order to accomplish Reinstatement.

1.133 "Released Parties" means, collectively, (i) all officers of each of the Debtors, all members of the board of directors of each of the Debtors, and all employees of each of the Debtors in each case, as of the date of the commencement of the hearing on the

45

Disclosure Statement, (ii) the Statutory Committees and all members of the Statutory Committees in their Capacities as such, (v) The Bank of New York, as original indenture trustee with respect to the Prepetition Notes, in its Capacity as such, and Wilmington Trust Company, as successor indenture trustee with respect to the Prepetition Notes, in its Capacity as such, (vi) the Plan Investors in their Capacities as such, (vii) the Prepetition Lender in their Capacities as such (viii) the Prepetition Agent in its Capacity as such, (ix) all Professionals, and (x) with respect to each of the above-named Persons, such Person's affiliates, principals, employees, agents, officers, directors, financial advisors, attorneys and other professionals, in their Capacities as such.

1.134 "Reorganized Debtor" or "Reorganized Debtors" means, individually, any of New Holding Company, New Operating Company or any Debtor and, collectively, all of New Holding Company, New Operating Company, and the Debtors, in each case from and after the Effective Date.

~~1.135~~ "Reorganized . . ." Means the applicable Debtor from and after the Effective Date.

~~1.136~~ "Restructuring Debtors" means those Debtors that will be the subject of a Restructuring Transaction under This Plan.

~~1.137~~ "Restructuring Transaction(s)" means a dissolution or winding up of the corporate existence of a Debtor or the consolidation, merger, contribution of assets, or other transaction in which a Reorganized Debtor merges with or transfers substantially all of its assets and liabilities to a Reorganized Debtor or their Affiliates, on or after the Effective Date, as set forth in the Restructuring Transaction Notice.

46

1.135 "Reorganized..." means the applicable Debtor from and after the Effective Date.

1.136 "Restructuring Debtors" means those Debtors that will be the subject of a Restructuring Transaction under this Plan.

1.137 "Restructuring Transaction(s)" means a dissolution or winding up of the corporate existence of a Debtor or the consolidation, merger, contribution of assets, or other transaction in which a Reorganized Debtor merges with or transfers substantially of its assets and liabilities to a Reorganized Debtor or their affiliates, on or after the Effective Date, as set forth in the Restructuring Transaction Notice.

47

~~Contribution of assets, or other transaction in which a Reorganized Debtor merges with or transfers substantially all of its assets and liabilities to a Reorganized Debtor or their affiliates, on or after the Effective Date, as set forth in the Restructuring Transaction Notice.~~

1.138 "Restructuring Transaction Notice" means the notice filed with the Bankruptcy Court on or before the Exhibit Filing Date as Exhibit II to this Plan listing the Restructuring Debtors and briefly describing the relevant Restructuring Transactions, including the corporate structure of the Reorganized Debtors as described in Exhibit I to this Plan.

1.139 "Retained Actions" means all Claims, Causes of Action, suits and proceedings whether, in law or in equity, whether known or unknown, which any Debtor or any Debtors' Estate may hold against any person, including, without limitation, (a) Claims and Causes of Action brought prior to the Effective Date, (b) Claims and Causes of Action against any person for failure to pay for products or services provided or

48

rendered by any of the Debtors, (c) Claims and Causes of Action relating to strict enforcement of any of the Debtors' intellectual property rights, including patent, copyrights and trademarks, and (d) Claims and Causes of Action seeking the recovery of any of the Debtors' or Reorganized Debtors' accounts receivable or other receivables or right to payment created or arising in the ordinary course of any of the Debtors' or the Reorganized Debtors' businesses, including without limitation, claim overpayments and tax refunds, provided however that the foregoing shall not include Trust Claims (including Avoidance Claims that are Trust Claims), which will be transferred to the Kmart Creditor Trust, Avoidance Claims, or Claims explicitly released under this Plan or by Final Order of the Bankruptcy Court prior to the date hereof.

1.140 "Scheduled" means, with respect to any Claim or Interest, the status, priority, and amount, if any of such Claim or Interest as set forth in the Schedules.

1.141 "Schedules" means the schedules of assets and liabilities and the statements of