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Timothy R. Rabel  
Querrey & Harrow, Ltd.  
175 W. Jackson Blvd., #1600  
Chicago, Illinois 60604

## AMENDMENT TO SUBLEASE AGREEMENT

(OAK LAWN, ILLINOIS - K#5072)

Between:

THE VILLAGE OF OAK LAWN, an Illinois home rule municipal corporation

and

KMART CORPORATION, a Michigan corporation

Dated:

February 1, 2012

Real Property Address: 11024 South Cicero Avenue, Oak Lawn, Illinois 60453.

Permanent Index Number : 24-16-409-054-0000

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## AMENDMENT TO SUBLEASE AGREEMENT

(OAK LAWN, ILLINOIS – K#5072)

This Amendment to Sublease Agreement (the "Amendment") dated as of the 1st day of February, 2012 (the "Effective Date"), is hereby made a part of that certain Sublease by and between THE VILLAGE OF OAK LAWN, an Illinois home rule municipal corporation ("Landlord") and KMART CORPORATION, a Michigan corporation ("Tenant"), (collectively Landlord and Tenant are herein referred to as the "Parties" and individually as "Party") dated as of November 1, 1979, as modified and as amended below.

### RECITALS

A. WHEREAS, J.C. Penney Properties, Inc. ("Penney"), as landlord and Tenant were Parties to a certain Sublease dated November 1, 1979; by and between, Penney and Tenant a Memorandum of which was filed for record on November 7, 1979, and duly recorded in the County Records as Document No. 25229754, as amended and/or supplemented by Letter of Indemnification as to Plat Act dated November 1, 1979; Letter to Kmart Corporation dated November 1, 1979 agreed to by Kmart re: commencement date and taxes; letter dated May 28, 2003 exercising option to extend term; notice dated May 19, 2008 exercising second option to extend term until May 31, 2014; and Recognition and Attornment Agreement dated effective as of August 15, 2011 and duly recorded in the County Records as Document No. 1126618069 (as so amended and/or supplemented, the "Lease"). A true and correct copy of the Lease is attached hereto as Exhibit "A";

B. WHEREAS, the Lease is for the property commonly known as 11024 S. Cicero Avenue, Oak Lawn, Illinois and as more particularly described in Exhibit "B" (the "Demised Premises");

C. WHEREAS, Pursuant to the Recognition and Attornment Agreement between Penney and Kmart, dated August 15, 2011 but effective as of January 29, 2010, the Lease was expressly recognized and converted into a direct lease between Penney, as fee title owner of the Demised Premises, and Kmart, as tenant;

D. WHEREAS, Landlord, pursuant to a Sale and Purchase Agreement effective as of August 30, 2011 purchased the Demised Premises from Penney and the transaction closed on November 30, 2011;

E. WHEREAS, Landlord, as assignee, Pursuant to the Assignment and Assumption of Lessor's Interest in Sublease, effective as of November 30, 2011, became the Landlord under the Lease ("Assignment"). A true and correct copy of the Assignment is attached hereto as Exhibit "C";

F. WHEREAS, Landlord and Tenant are the current "Landlord" and "Tenant", respectively, under the Lease and the current term shall expire as of May 31, 2014;

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- G. WHEREAS, Tenant has paid the rent due under the Lease as of January, 2012;
- H. WHEREAS, Landlord and Tenant entered into a letter agreement dated January 27, 2012, pursuant to which Tenant was excused from making the February, 2012 rent payments under the Lease for as long as the Parties negotiated the Settlement Agreement and Amendment in good faith ("Letter Agreement"). A true and correct copy of the Letter Agreement is attached hereto as Exhibit "D";
- I. WHEREAS, Landlord has taken steps under the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq. (the "Act") to include the Demised Premises together with other property within a tax increment financing district redevelopment project area within the meaning of the Act, with the intention of enhancing economic development within the Village of Oak Lawn by acquiring Tenant's leasehold interest in the Demised Premises as well as the real estate interest of certain other property owners within the tax increment financing redevelopment project area;
- J. WHEREAS, Tenant has filed suit against Landlord in the Circuit Court of Cook County, County Department, Chancery Division known as *Kmart Corporation v. The Village of Oak Lawn*, 06 CH 18001 challenging, *inter alia*, the eligibility for and designation of the Demised Premises and other real estate in the vicinity as a tax increment financing redevelopment area pursuant to the Act (the "Litigation");
- K. WHEREAS, In lieu of further litigation and, in order to proceed with the mutually agreed disposition of the Litigation, Landlord and Tenant have entered a Confidential Settlement and Mutual Release Agreement (the "Settlement Agreement") and Stipulation of Dismissal in the Litigation and which will be dismissed pursuant to an Agreed Order of Dismissal;
- L. WHEREAS, Landlord and Tenant have entered into this Amendment for the purpose of implementing the aforesaid Settlement Agreement and Agreed Order of Dismissal in the Litigation.
- M. WHEREAS, Landlord is entering this Agreement pursuant to its home rule powers and its determination that the Amendment will benefit and enhance the Village of Oak Lawn;
- N. WHEREAS, Landlord finds the powers exercised hereunder to be in furtherance of a public use and essential to the public interest;
- O. WHEREAS, Landlord has determined that this Amendment and Settlement Agreement furthers the immediate possession of the Demised Premises and is strategic to achieving regional storm detention goals; continued bike and pedestrian access to regional facilities pursuant to the Village Bikeway Master Plan; and implementation of the SWMC Cicero Corridor Plan and therefore, the Landlord, will be seeking federal, state, and regional financial matching monies; and
- P. WHEREAS, the President and the Board of Trustees have determined that entering into this Amendment is in the best interest of Oak Lawn.

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Q. WHEREAS, Tenant's parent company, Sears Holdings Corp., is currently receiving economic assistance from the State of Illinois ("State Incentives");

R. WHEREAS, the Parties do not intend for this agreement to jeopardize the State Incentives;

S. WHEREAS, Landlord has contacted the office of the Governor of the State of Illinois to confirm that the aforesaid early lease termination, store closing and related acts are required by the Village to implement the economic redevelopment of the tax increment financing redevelopment project plan for the tax increment financing redevelopment project area in which the Demised Premises are located, and will ultimately result in a net increase in real estate tax assessments and in full and part-time employment.

T. WHEREAS, the Parties will mutually agree upon a draft public statement stating the aforesaid and thanking Tenant for its cooperation in making redevelopment possible and reasserting that it is Landlord that initiated the discussion of store closing and not Tenant.

**NOW, THEREFORE**, in consideration of the mutual covenants in this Amendment, the Parties agree as follows:

1. **RECITALS.** The foregoing Recitals and Settlement Agreement are incorporated herein and made a part hereof.
2. **TERM, OPTIONS TO EXTEND.** Pursuant to the Settlement Agreement, the Parties have agreed that, notwithstanding anything contained in the Lease to the contrary (including without limitation Section 3.3 and notwithstanding any prior exercise of Tenant's option to utilize an Extended Term provided in the Lease) the current Extended Term of the Lease as well as Tenant's right to possession under the Lease shall expire on the first to occur of either (A) as of 11:59 p.m. on May 31, 2012, or (B) an earlier date specified by means of a written notice given by Tenant to Landlord (the "Settlement Agreement Lease Expiration Date") without further notice from Landlord, and Tenant shall have no further right to exercise Tenant's options for additional Extended Terms.
3. **RENT.** Pursuant to the Settlement Agreement, the Parties have agreed that, notwithstanding anything contained in the Lease to the contrary (including without limitation Article 5 and the Rent Rider to the Lease), Tenant's obligation to pay Fixed Rent as defined under the Lease shall expire and terminate as of January 31, 2012, with the result that no Fixed Rent shall be due and owing from Tenant for the period of Tenant's occupancy under the Lease for the period beginning and including February 1, 2012 and ending as of the Settlement Agreement Lease Expiration Date;
4. **TAXES.** Pursuant to the Settlement Agreement, the Parties have agreed that, notwithstanding anything contained in the Lease to the contrary (including without limitation Article 6 of the Lease), and notwithstanding Tenant's possession of the Demised Premises for the period prior to Settlement Agreement Lease Expiration Date, Landlord shall at Landlord's sole expense pay each installment of all general real estate taxes, special assessments (if any) and service area assessments (if any) attributable to the Demised Premises (currently commonly known as Permanent Index Number 24-16-409-054-0000) for: a.) all of calendar year 2011,

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payable in 2012, under the current system of taxation in Cook County, Illinois; and b.) all of calendar year 2012, payable in 2013, each when due in a timely manner prior to the accrual of any interest, penalty or delinquency, it being agreed by Landlord and Tenant that Landlord is assuming the obligation to pay such taxes and that Tenant is released from any obligation under the Lease to pay the same. Landlord's obligations under the preceding sentence shall include, without limitation, any separately issued tax bills against Tenant's leasehold interest in the Demised Premises under any newly issued Permanent Index Number or Numbers reflecting Landlord's purchase of the fee interest in the Demised Premises. Tenant shall notify Landlord, via fax to the Landlord's Finance Director, promptly upon Tenant's receipt of any tax bills directed to Tenant and provide copies of same. Unless as a result of Tenant's failure to timely provide such notice and copies of tax bills, in the event Landlord fails to perform any of its obligations under the preceding sentence in a timely manner, among other remedies available to Tenant at law and in equity Landlord shall upon Tenant's demand, defend, indemnify and hold Tenant harmless from and against all liability, including without limitation personal liability under the Illinois Property Tax Code and under any other provision in Illinois creating personal liability for any such tax payments.

Landlord and Tenant expressly agree that the provisions of this Section 4 above shall survive the entry of the Agreed Order of Dismissal and the expiration of the Lease on the Settlement Agreement Lease Expiration Date.

5. CARE OF THE PREMISES, ALTERATIONS, SIGNS. Pursuant to the Settlement Agreement, the Parties acknowledge that Landlord intends to redevelop the Demised Premises and other nearby property in a manner that does not utilize the existing improvements on the Demised Premises, and that, given Tenant's aforesaid agreement to substantially shorten the duration of the Lease and forego remaining Tenant options to utilize available remaining Extended Terms, Landlord shall not, notwithstanding anything contained in the Lease to the contrary (including without limitation Article 12) commence or cause to be commenced a.) any municipal or statutory code enforcement actions under applicable ordinances, laws and regulations; or b.) any actions at law or equity or enforcement actions under the Lease, in either case (*i.e.*, under either Subpart "a" or "b" of this Section 5) against either the Demised Premises, Tenant, or Tenant's past and present affiliates, parent companies, subsidiaries, successors, assigns, directors, officers, shareholders, agents, servants and employees (the "Tenant Released Parties") regarding or arising from the condition of the Demised Premises or regarding or arising from Tenant's maintenance of the Demised Premises, and in no event shall Landlord demand or require Tenant to proceed with any site and/or building improvements to the Demised Premises. In the event Landlord makes any such demand, or Landlord commences or causes to be commenced any action described in either Subpart "a" or "b" of this Section 5, Landlord shall be liable to Tenant for all attorneys' fees, costs, professional fees, expert witness fees and disbursements incurred in responding to any such action or demand. Tenant's obligation regarding the state of condition and repair of the Demised Premises shall be limited to the scope of work necessary in Tenant's sole opinion to continue Tenant's remaining retail operations, to correct and/or alleviate an immediate threat to the safety of the public, Tenant's employees or customers, and to vacate Tenant's existing business within the Demised Premises on or before the Settlement Agreement Lease Expiration Date. Landlord shall at its expense in a good, timely and workmanlike manner repair, maintain and replace all parking areas, sidewalks, and storm water management and utility facilities within the Demised Premises and serving the Demised Premises during the period from and including February 1, 2012 to the Settlement Agreement

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Lease Expiration Date, as well as snow plowing of all said parking areas and sidewalks within the Demised Premises and serving the Demised Premises during the aforesaid period. During the period from and including February 1, 2012, to the Settlement Agreement Lease Expiration Date, Landlord's right of entry into the Demised Premises for the aforesaid purposes shall be governed by the right of entry provided to Landlord by Tenant in Section 9 below. Notwithstanding anything contained herein or the Lease to the contrary, Tenant is not authorized to make any further alterations, additions or improvements to the Demised Premises without the express written consent of the Landlord.

6. INSURANCE. Prior to or contemporaneous with the Parties' execution and delivery of this Amendment, in full satisfaction of Tenant's insurance obligations under Sections 13.1 and 13.2 of the Lease, Tenant shall provide Landlord with the certificates of insurance described in Section 13.1 and described in Section 13.2 in the form attached hereto as Exhibit "E" and made part hereof naming Landlord as an additional insured for the remainder of the current Extended Term (as modified and shortened by this Amendment).

7. GOVERNING REGULATIONS. Notwithstanding anything contained in Section 10.1 of the Lease to the contrary, Tenant is not required to comply with any rules, orders, and regulations of any public authority regarding building codes and property maintenance.

8. REPRESENTATIONS.

A. TENANT'S REPRESENTATIONS. Tenant represents and warrants to Landlord, which representations and warranties shall be deemed reasserted as of and shall survive the Settlement Agreement Lease Expiration Date, that to the best of the actual knowledge of Kal Gibron, Vice President – Real Estate and Real Estate Law, with no duty to investigate, the following:

i. Tenant has the power and authority to enter into and perform this Amendment and the Settlement Agreement and the Amendment and the Settlement Agreement have been duly authorized by Tenant;

ii. Tenant has not mortgaged, encumbered, subleased, assigned, granted any easement, security interest in, licenses, right-of-ways or otherwise encumbered the Demised Premises and that Tenant has the complete right, power and authority to enter into this Amendment and the Settlement Agreement and to terminate the leasehold in the Demised Property on the terms set forth in this Amendment and the Settlement Agreement and notwithstanding anything contained within Section 16.1 of the Lease, shall not assign or sublease any portion of the Lease or this Amendment or the Settlement Agreement;

iii. Landlord is not in default of any of the terms of the Lease.

iv. This Amendment and the Settlement Agreement will not conflict with, result in a breach of the terms and conditions of, accelerate any provision of, or constitute any default under, any contract or agreement or leasehold mortgage or indenture of which Tenant is now or may become a party.

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v. No labor, material or services have been furnished in, on or about the Demised Premises or any part thereof as a result of which any mechanics', laborers' or material men's liens or claims thereof might arise; and

vi. There are no pending actions, suits, arbitrations, unsatisfied orders or judgments, government investigations or proceedings against Tenant or the Demised Premises regarding the condition of the Demised Premises other than prior notices and allegations issued and made by Landlord.

Except as expressly set forth above, Tenant makes no covenant, representation or warranty as to the suitability of the Demised Premises for any purpose whatsoever or as to the physical condition of the Demised Premises. Except as to breaches of the above representations, Landlord hereby releases Tenant and the Tenant Released Parties, from any and all claims, liabilities, demands, damages, causes of action, lawsuits, liens and notices, whether known or unknown, suspected or unsuspected, which Landlord now or in the future has or may have against the Tenant and the Tenant Released Parties, specifically relating to or arising out of the condition of the Demised Premises.

Except as expressly set forth above, Landlord agrees that it is acquiring the Demised Premises and Tenant's leasehold interest therein in "as-is" and "where is" condition, free of any other representations or warranties, expressed or implied, except as explicitly set forth in this Lease Amendment or in the Settlement Agreement. All implied warranties, including, but not limited to the implied warranties of merchantability, of fitness for a particular purpose and habitability are excluded from this stipulation.

B. Landlord represents and warrants to Tenant which representations and warranties shall be deemed reasserted as of and shall survive the Settlement Agreement Lease Expiration Date, that to the best actual knowledge of Larry Deetjen, Village Manager of the Village of Oak Lawn, with no duty to investigate:

i. Landlord has the power and authority to enter into and perform this Amendment and the Settlement Agreement and the Amendment and the Settlement Agreement have been duly authorized by Landlord;

ii. Landlord has not conveyed or encumbered with a mortgage or indenture Landlord's fee interest in the real estate on which the Demised Premises are located nor assigned or collaterally assigned Landlord's interest in the Lease and that Landlord has the complete right, power and authority to enter into this Amendment and the Settlement Agreement and to terminate the leasehold in the Demised Premises on the terms set forth in this Amendment and the Settlement Agreement without the consent of any mortgagee or trustee under an indenture and notwithstanding anything contained in Section 16.2 of the Lease, shall not assign or sublease Landlord's interest in the Lease or in the Settlement Agreement;

iii. Tenant is not in default of any of the terms of the Lease;

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iv. This Agreement and the Settlement Agreement will not conflict with, result in a breach of the terms and conditions of, accelerate any provision of, or constitute any default under, any contract or agreement or mortgage or indenture of which Landlord is now or may become a party;

v. No labor, material or services have been furnished in, on or about the Demised Premises or any part thereof as a result of which any mechanics', laborers' or materialmens' liens or claims might arise; and

vi. Except for the Litigation, there are no pending actions, suits, arbitrations, unsatisfied orders or judgments, government investigations or proceedings against Landlord or the Demised Premises regarding the condition of the Demised Premises.

Except as expressly set forth above, Landlord makes no covenant, representation or warranty as to the suitability of the Demised Premises for any purpose whatsoever or as to the physical condition of the Demised Premises. Except as to breaches of the above representations, Tenant hereby releases Landlord and its officers, trustees and employees ("Landlord Released Parties") from any and all claims, liabilities, demands, damages, causes of action, lawsuits, liens and notices, whether known or unknown suspected or unsuspected, which Tenant now or in the future has or may have against Landlord and the Landlord Released Parties, specifically relating to or arising out of the condition of the Demised Premises.

Except as expressly set forth above, Tenant agrees that it is occupying the Demised Premises and Tenant's leasehold interest therein in an "as is" and "where is" condition, free of any other representations and warranties, expressed or implied, except as explicitly set forth in this Lease Amendment or in the Settlement Agreement. All implied warranties, including but not limited to the implied warranties of merchantability, of fitness for a particular purpose and habitability are excluded from this stipulation.

C. Landlord and Tenant expressly agree that the provisions of this Section 8 above shall survive the entry of the Agreed Order of Dismissal and the Settlement Agreement Lease Expiration Date and such terms and provisions shall remain in full force and effect thereafter.

9. **LANDLORD USE AND ACCESS TO DEMISED PREMISES.** Notwithstanding anything contained herein to the contrary and subject to the terms of Section 8, above, the Landlord and its agents, contractors, employees and representatives shall have access to the Demised Premises, subject to Tenant's reasonable restrictions (including with respect to timing) relating to the uninterrupted conduct of the businesses on the Demised Premises, to a.) on at least five (5) days prior notice to Tenant, conduct the storm drainage and other public improvements described in Exhibit "F", attached hereto and made part hereof, in the outer section of the parking area marked by "Landlord Work Zone" on Exhibit "G" attached hereto and made part hereof during the period between February 1, 2012 and May 31, 2012 in a manner that does not disturb Tenant's use and operation of the store building located on the Demised Premises and in a manner that does not disturb parking for Tenant, its customers, guests, invitees, and employees of the Demised Premises outside the Landlord Work zone; and b.) perform Landlord's maintenance, repair, replacement and snow plowing obligations pursuant to Section 8 of this



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Amendment, above. Landlord shall promptly restore any damage to the Demised Premises (including improvements) resulting from any such activity.

As a condition of the Landlord's or any third party's right of access to the Demised Premises for such purposes, (i) Landlord (or such third party) shall provide to Tenant evidence of liability insurance that is in form and substance reasonably satisfactory to Tenant and naming Tenant as an additional insured, and (ii) Landlord agrees to indemnify, hold harmless and, if requested by Tenant, defend Tenant from any and against any and all claims, demands, causes of action, damages, losses and liabilities that may be hereafter asserted against or incurred by Tenant in connection with the Landlord's exercise of its rights under this Section 9, including but not limited to personal injury claims and mechanic's lien claims, which shall survive the expiration of the Lease or the Settlement Agreement Lease Expiration Date.

10. INDEMNIFICATION. "Tenant's Indemnification" under Article 14 and Section 14.1 of the Lease is hereby deleted and restated in its entirety as follows:

Tenant shall protect, indemnify, save harmless and, at Landlord's option, defend Landlord from and against all liabilities, obligations, claims, damages, penalties, causes of action, judgments, costs and expenses imposed upon or incurred by or asserted against Landlord or the Demised Premises during the Term of this Lease, except to the extent caused by the willful act or negligence of Landlord, or by Landlord's exercise or performance of either its rights or obligations under Section 7 or 9 of the Amendment to this Lease, by reason of (a) any accident or injury to or death of persons or loss of or damage to property occurring within the building located in the Demised Premises or any part thereof, (b) any failure on the part of Tenant or any of its agents, contractors, sublessees, licensees, concessionaires or invitees to perform or comply with any of the terms of this Lease, as amended, or (c) any negligence or tortious act on the part of Tenant or any of its agents, contractors, sublessees, licensees, concessionaires or invitees. In case any action, suit or proceeding is brought against Landlord by reason of any such occurrence, Tenant, upon request of Landlord shall at Tenant's expense defend such action, suit or proceeding with counsel designated by Landlord.

11. CONDEMNATION. The following Section 17.6 is added to the Lease, stating:

"Notwithstanding anything contained herein to the contrary, Landlord acknowledges that: A.) it has entered into a Settlement Agreement with Tenant regarding the case known as *Kmart Corporation v. the Village of Oak Lawn*, No. 06 CH 18001 in the Circuit Court of Cook County, County Department, Chancery Division (the "Litigation"), which challenged, *inter alia*, the Landlord's efforts to utilize the Illinois Tax Increment Allocation Redevelopment Act (the "Act") to redevelop the Demised

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Premises and neighboring properties in the vicinity and to include the same as a redevelopment project area within the meaning of the Act as well as utilize various powers set forth in the Act to accomplish said redevelopment, including without limitation municipal use of condemnation; and B.) as a result of the Settlement Agreement between Landlord and Tenant regarding the Litigation, the duration of the Lease is being substantially reduced thus eliminating Tenant's right to exercise any additional, remaining Extended Terms, and other modifications to the Lease are being made which adequately accomplish the public purposes of the Village in pursuing said economic development; and C.) as a result of the foregoing, the Village agrees not to utilize the power of eminent domain against either Tenant or the Demised Premises provided Tenant is not in default of its obligations under either the Settlement Agreement or the Lease, as amended.

12. DAMAGE CLAUSE. Article 18 of the Lease is hereby deleted and replaced with the following:

If all or any part of the building improvements on the Demised Premises shall be damaged or destroyed so that, in the sole judgment of Tenant the said building shall be unsuitable for restoration for Tenant's continued use and occupancy for the remaining duration of the Lease prior to the Settlement Agreement Lease Expiration Date, then, in lieu of effecting restoration of the said building improvements, Tenant shall give notice to Landlord within thirty (30) days after such damage or destruction of Tenant's intention to either terminate this Lease on the date set forth in Tenant's notice or to restore the building in the Demised Premises to a condition sufficient in Tenant's opinion to continue Tenant's retail operations and to vacate the Demised Premises on or before the Settlement Agreement Lease Expiration Date, at Tenant's sole cost and expense and may utilize the proceeds of any insurance required under Section 13.1. If Tenant elects to terminate this Lease under the provisions of this Article 18, the proceeds of any insurance required under Section 13.1 of the Lease which are payable in connection with such damage or destruction, less any cost and expense incurred in collecting such proceeds (such proceeds less such cost and expense being herein called the "net proceeds"), and the right thereto, shall be assigned to and shall belong to Landlord or, if Tenant shall not be required to maintain insurance under Section 13.1, Tenant shall pay Landlord an amount (herein called the "substitute proceeds") equal to the net proceeds of insurance that would have been payable in connection with such damage or destruction if Tenant had maintained the insurance provided for in Section 13.1, and in either case this Lease shall terminate on such date specified by Tenant in said notices.

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13. SURRENDER OF PREMISES. Section 19.2 of the Lease is hereby deleted and replaced with the following:

On or before 11:59 p.m. on the Settlement Agreement Lease Expiration Date, Tenant shall peaceably surrender the Demised Premises in broom clean condition and as set forth in Section 2 of the Amendment to this Lease. Tenant shall at its expense, remove its trade fixtures, signs, merchandise and personal property (but not the Tenant's Work, floor covering and lighting equipment) from the Demised Premises and any of the aforesaid property which is to be removed by Tenant but which is not removed may at Landlord's option be removed at Tenant's expense or be deemed abandoned and become Landlord's property. All alterations, additions, improvements and fixtures (other than Tenant's trade fixtures and signs) which shall have been made or installed by either Landlord or Tenant upon the Demised Premises (including, without limitation, the Tenant's Work, floor covering and lighting equipment) shall remain upon and be surrendered with Demised Premises as a part thereof, without disturbance, molestation or injury, and without charge, at the expiration or termination of this lease. Tenant shall promptly surrender all keys for the Demised Premises to Landlord and shall inform Landlord of the combinations on all combination locks and safes on the Demised Premises.

14. UTILITY SERVICES. The following sentences are added at the conclusion of Section 9.1:

"Utility charges shall be prorated as of the conclusion of the Settlement Agreement Lease Expiration Date. Landlord shall be responsible for arranging for utility services and charges thereafter, including without limitation any security services desired by Landlord."

15. TERMINATION/CONDITION PRECEDENT. Tenant reserves the right to terminate this Amendment as well as the Settlement Agreement by means of written notice given to Landlord on or before 11:59 p.m. on February 23, 2012 if Tenant determines that the early termination of the Lease pursuant to this Amendment and the Settlement Agreement, and the related store closing and employee terminations will jeopardize existing agreements and amendments to agreements for economic assistance between Tenant's affiliated corporations and corporate parent and the State of Illinois.; The a.) execution of the Settlement Agreement, the Stipulation of Dismissal attached hereto as Exhibit "H" and this Amendment by Landlord and Tenant b.) the entry of the Stipulation to Dismiss and Agreed Order of Dismissal pursuant to the terms of Section 8 of the Settlement Agreement and c.) The Landlord's board of trustees approval of this Amendment and Settlement Agreement on or before the Village's execution and delivery of any of the aforesaid are express conditions precedent to the enforceability and validity of this Amendment.

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16. NOTICES. All notices, demands and other communications hereunder shall be in writing and delivered personally or by a nationally recognized overnight courier service or mailed (by registered or certified mail, return receipt requested, postage prepaid) or telecopied with a confirming notice, addressed to the respective parties, as follows:

If to Landlord:           The Village of Oak Lawn  
9446 S. Raymond  
Oak Lawn, Illinois 60453  
Attn: Village Manager  
Telephone: 708-499-7743

and to:                     Querrey & Harrow, Ltd.  
175 W. Jackson Blvd., #1600  
Chicago, Illinois 60604  
Attn: Timothy R. Rabel  
Telephone: 312-540-7074

If to Tenant:             Kmart Corporation  
3333 Beverly Road, Dept. 824RE  
Hoffman Estates, Illinois 60179  
Attn: Kal Gibron, VP Real Estate Law  
and Asset Management  
Telephone: 847-286-9341

with a copy to:         Kmart Corporation  
3333 Beverly Road, Dept. 824RE  
Hoffman Estates, Illinois 60179  
Attn: Robyn Alexander, Assistant General Counsel,  
Real Estate  
Telephone: 847-286-1719

or one (1) business day after delivery to a nationally recognized and reputable courier (such as U.P.S., Federal Express, Airborne, or the like) guaranteeing next-day delivery with delivery charges prepaid.

17. COUNTERPARTS. This Amendment may be executed in any number of counterparts.

18. SEVERABILITY. The provisions of this Amendment are severable. If any provision or part thereof in this Amendment is declared invalid or unenforceable, the ruling shall not affect the validity and enforceability of any other provision in the Amendment, and the provision at issue shall be enforced to the fullest extent possible under law or equity.

19. AMENDMENT/MODIFICATION. This Amendment and the Lease may only be modified or further amended in a writing signed by the Parties.

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20. SUBJECT TO LEASE. Except as explicitly provided herein, this Amendment shall be subject to all terms and conditions as set forth in the Lease as amended by the Amendment.
21. LIMITATION OF LIABILITY. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that no individual member of Landlord or Tenant or any of their respective officers, directors, officials, board members, members' representatives or employees shall be personally liable for any of Landlord's or Tenant's obligations or any undertaking or covenant of Landlord or Tenant contained in this Agreement.
22. LEASE TO REMAIN IN FULL FORCE AND EFFECT. Except as modified by this Amendment, the Lease shall continue in full force and effect. If there is any conflict between the terms of this Amendment and the Lease, the terms of this Amendment shall control.
23. RECORDING. A copy of this Amendment shall be recorded with the Cook County Recorder of Deeds.
24. HOLDOVER. Notwithstanding anything contained within this Amendment to the contrary, should Tenant fail to vacate the Demised Premises upon the Settlement Agreement Lease Expiration Date, and Landlord has not granted Tenant an extension: A.) the Fixed Rent applicable to the Demised Premises shall resume at the time of such failure to vacate at a holdover rate of 300% of the Fixed Rent set forth in the Lease, and B.) Section 20.1 shall remain in full force and effect and the provisions of Sections 3, 5 and 7 of this Amendment shall not apply to the Holdover tenancy but rather the terms of the Lease that such sections modified shall apply to the Holdover tenancy. Apart from pursuing an action for forcible entry and detainer, Landlord's remedy for damages in the event of holdover by Tenant shall be limited to the additional rent described in the preceding sentence.
25. BROKERS. Each Party represents to the other Party, that it has not used a broker in connection with any part of this Amendment and that the Party breaching this representation shall defend and hold harmless the non-breaching Party from any and all liabilities, demands, losses, damages, costs and expenses (including reasonable attorney fees) resulting from the claim of any such broker.
26. EXHIBITS. The Exhibits A through H attached hereto are incorporated into this Amendment as if set forth fully herein.

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IN WITNESS WHEREOF, the Parties hereto have duly executed this Amendment as of the date first written above.

**THE VILLAGE OF OAK LAWN**, an Illinois home rule municipal corporation

**KMART CORPORATION**, a Michigan corporation

Landlord:

Tenant:

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

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

Name: LARRY R. DEETJEN

Name: \_\_\_\_\_

Date: FEBRUARY 21, 2012

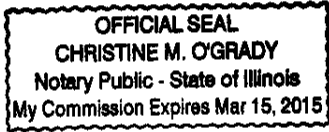
Date: \_\_\_\_\_

Subscribed and sworn to before me this February 21, 2012.

Subscribed and sworn to before me this February \_\_\_\_, 2012.

*Christine M. O'Grady*  
\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Notary Public



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IN WITNESS WHEREOF, the Parties hereto have duly executed this Amendment as of the date first written above.

**THE VILLAGE OF OAK LAWN**, an Illinois home rule municipal corporation

**KMART CORPORATION**, a Michigan corporation

Landlord:

Tenant:

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

By: J. Kal Gibron

Name: \_\_\_\_\_

Name: J. Kal Gibron  
V.P. Real Estate

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Subscribed and sworn to before me this February \_\_\_\_, 2012.

Subscribed and sworn to before me this February 16<sup>th</sup>, 2012.

\_\_\_\_\_  
Notary Public

Mary J Cox  
Notary Public



REAL ESTATE  
JKS by SZ  
LEGAL  
RA by MS

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## EXHIBITS

- |           |  |
|-----------|--|
| Exhibit A | Lease  |
| Exhibit B | Legal Description of Demised Premises                |
| Exhibit C | Assignment   |
| Exhibit D | Letter Agreement                                     |
| Exhibit E | Tenant Insurance Certificates                        |
| Exhibit F | Landlord's Storm Drainage and Public Improvements    |
| Exhibit G | Landlord Work Zone                                   |
| Exhibit H | Stipulation to Dismiss and Agreed Order of Dismissal |

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EXHIBIT A

LEASE

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A large, dense black scribble consisting of many overlapping, horizontal and diagonal strokes, completely obscuring any text or graphics that might have been present in the center of the page.

# UNOFFICIAL COPY

K MART STORE #3515  
The Treasury Store No. 5072  
At Oaklawn, Illinois

J. C. PENNEY PROPERTIES, INC.,

"Landlord,"

TO

K MART CORPORATION

"Tenant".

SUBLEASE

INDEX

Article (if of Article)

	<u>Page</u>
APPLICABLE LAW, SEVERABILITY (27)	20
ASSIGNMENT OR SUBLETTING (16)	13
AUTHORITY (32)	21
BROKERS (36)	22
CAPTIONS (26)	20
CARE OF THE PREMISES, ALTERATIONS, SIGNS (12)	9
CONDEMNATION (17)	13
COPIES (33)	21
DAMAGE CLAUSE (18)	15
DEFAULT (22)	17
DEMISE (2)	3
ESTOPPEL (34)	21
FIGURES (11)	9
FORCE MAJEURE (24)	19
GAS STATION PARCEL (21)	17
GOVERNMENTAL REGULATIONS (10)	9
HOLDING OVER (20)	17
INSPECTION (23)	17
INSURANCE (13)	19
LANDLORD'S WORK, DELIVERY OF PREMISES, TENANT'S WORK (7)	10
LIABILITY (31)	7
MECHANICS LIENS (15)	21
MISCELLANEOUS (37)	12A
NON-WAIVER (28)	20
NO PARTNERSHIP (29)	20
NO RECORDING (25)	20
NOTICES (35)	20
RENT (5)	22
RENT RIDER, EXHIBITS, DEFINITIONS (1)	5
SUBJECT TO PRIMARY LEASE: COVENANT OF TITLE, AUTHORITY AND QUIET POSSESSION (4)	1
SUCCESSORS (30)	4
SURRENDER OF PREMISES (19)	20
TAXES (6)	16
TENANT INDEMNIFICATION (14)	5
TERM, OPTIONS TO EXTEND (3)	12
USE (8)	3
UTILITY SERVICES (9)	8
RENT RIDER	8
EXHIBIT A - Description of the Demised Land	
EXHIBIT B - Plot Plan	
EXHIBIT C - Description of the Primary Lease	
EXHIBIT D - Description of the Landlord's Work	
EXHIBIT E - Requirements Concerning Tenant's Work	
EXHIBIT F - Description of the Permitted Exceptions	
EXHIBIT G - Description of Gas Station Parcel	

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The Treasury  
Store No. 5072  
Oakland, Illinois

K MART - Store 13515

SUBLEASE

SUBLEASE (this "Lease") dated as of November 1, 1979 by and between J. C. PENNEY PROPERTIES, INC., a Delaware corporation having an address at 1301 Avenue of the Americas, New York, New York 10019 ("Landlord") and K MART CORPORATION, a Michigan corporation having its principal office at 3100 West Big Beaver Road, Troy, Michigan 48064, ("Tenant").

WITNESSETH:

WHEREAS, Landlord desires to sublease to Tenant and Tenant desires to sublease from Landlord the Landlord's Building and site improvements together with the land comprising approximately 18 acres (said land is hereinafter referred to as the "Demised Land"),

NOW, THEREFORE, in consideration of the mutual rights, responsibilities and covenants hereinafter set forth and upon the terms, covenants and conditions hereinafter set forth:

ARTICLE I

RENT RIDER, EXHIBITS, DEFINITIONS

1.1 Attached to this Lease and hereby made a part hereof are the following:

RENT RIDER, being a statement of the rent to be paid by Tenant, together with provisions pertaining to the payment of such rent;

EXHIBIT A, being a description of the Demised Land;

EXHIBIT B, being a Plot Plan of the Demised Land and the Gas Station Parcel, hereinafter defined, showing for information purposes only, the location of the Landlord's Building;

EXHIBIT C, being a description of the Primary Lease hereinafter defined;

EXHIBIT D, being a description of the Landlord's Work hereinafter defined;

EXHIBIT E, setting forth certain requirements with respect to work which may be performed by Tenant on the Demised Land;

EXHIBIT F, being a description of the Permitted Exceptions hereinafter defined;

EXHIBIT G, being a description of the Gas Station Parcel.

The Rent Rider and the Exhibits to this Lease have been initialed by the parties or their attorneys.

1.2 For the purposes of this Lease, the following terms shall have the meanings hereinafter specified:

(a) "Basic Rent Payment Date" means the last day of every calendar month during the term of this Lease.

(a-i) "Commencement Date" shall have the meaning hereinafter specified in paragraph 3.1 hereof.

(b) "Condemnation" shall mean a taking by condemnation or other eminent domain proceedings pursuant to any law, general or special, or a sale to governmental or public authority legally

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empowered to take property by such condemnation or other eminent domain proceedings or a temporary requisition of the use and occupancy of premises by any governmental or public authority and the words "take", "taken" or "taking", when used in connection with the word "Condemnation" shall refer to any such taking, sale or requisition.

- (c) "Demised Land" shall mean the tract of land described in Exhibit A, attached hereto.
- (d) "Demised Premises" shall mean the Demised Land together with the site improvements and the Landlord's Building, shown on Exhibit B, attached hereto, together with all mechanical equipment and other building fixtures now or hereafter installed in or for use of such premises.
- (e) "Event of Default" shall have the meaning hereinafter specified in Article 22 hereof.
- (f) "Extended Term" shall have the meaning hereinafter specified in paragraph 3.3 hereof.
- (g) "Fixed Rent" shall have the meaning specified in the Rent Rider.
- (h) "Full Commencement Date" shall mean the earlier of (i) the sixtieth (60th) day following the Commencement Date and (ii) the date on which the Landlord's Building is opened to the public for business.
- (i) "Force majeure" shall have the meaning hereinafter specified in Article 24 hereof.
- (j) "Gas Station Parcel" shall mean the tract of land described in Exhibit G, attached hereto.
- (k) "Ground Lease" shall mean the ground lease or leases, if any, described in the Primary Lease, to which the Primary Lease is subject, and all amendments and modifications thereof heretofore or hereafter made. (A memorandum of the Ground Lease dated May 1, 1974 was Recorded May 8, 1974 as Document 22709541 and registered as LR2751510).
- (k-1) Insurance Requirements shall mean all terms of any insurance policy covering or applicable to the Demised Premises or any part thereof, all requirements of the issuer of any such policy, and all orders, rules, regulations and any other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Demised Premises or any part thereof, or any use or condition of the Demised Premises or any part thereof.
- (l) "Landlord's Building" shall mean the building now located on the Demised Land and shown on Exhibit B, attached hereto.
- (m) "Landlord's Work" shall mean generally the work of separating the Demised Premises from the Gas Station Parcel but shall include only those items of work specifically described on Exhibit D, attached hereto.

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(m-i) "Legal Requirements" shall mean all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary which now or at any time hereafter may be applicable to the Demised Premises or any part thereof, or any of the adjoining sidewalks, streets or ways, or any use or condition of the Demised Premises or any part thereof.

(m-ii) "Net Worth" shall mean the sum as reported from time to time (on the basis of its last audited balance sheet) by named Tenant to its stockholders of the consolidated stockholders equity.

(n) "Permitted Exceptions" shall have the meaning specified in Exhibit F, attached hereto.

(o) "Primary Lease" shall mean the lease or leases described on Exhibit C, attached hereto, under and pursuant to which Landlord has leased or subleased the Entire Premises, and all amendments and modifications thereof heretofore and hereafter made.

(p) "Real Estate Taxes" shall mean all real estate taxes and all assessments (including, without limitation, all assessments and charges for public improvements or benefits), in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, assessed, levied, imposed or payable on or in respect to the Demised Premises or any part thereof during or in respect to the term of this Lease.

NOTE: The words "Section" and "paragraph" are used interchangeably in this Lease.

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- (q) "Tenant's Work" shall mean generally the work of preparing the Demised Premises for Tenant's use and occupancy as well as any and all construction, alterations, additions or other work which may be done by Tenant on or about the Demised Premises during the term of this Lease.
- (r) "Term" shall have the meaning hereinafter specified in Article 3 hereof.

## ARTICLE 2

### DEMISE

2.1 Upon and subject to the terms, covenants and conditions hereinafter set forth and for the Term hereafter described, Landlord hereby demises and subleases to Tenant and Tenant hereby takes and subleases from Landlord the Demised Premises.

2.2 Landlord hereby grants Tenant, without any warranty of title whatsoever, a license, for the Term of this Lease, to use any easement for access and/or utilities appurtenant to the Demised Land, which may exist from time to time.

2.3 Landlord hereby assigns to Tenant, during the Term of this Lease, the benefits granted to Landlord pursuant to (1) Paragraph 11 of the "Agreement concerning Installation of Traffic Control Signals and On-Site Improvements" dated August 11, 1970 by and between the Village of Oak Lawn, a Municipal Corporation of the State of Illinois ("Village") and Landlord and (2) Paragraph 8 of the "Agreement concerning Relocation of Drainage Ditch in Vacated 110th Street" dated August 11, 1970 by and between the Village and Landlord.

## ARTICLE 3

### TERM, OPTIONS TO EX END

3.1 Upon and subject to the terms, covenants and conditions hereinafter set forth, Tenant shall have and hold the Demised Premises for a term commencing on the earlier of (a) November 1, 1979 and (b) the date on which Landlord delivers the Landlord's Building to Tenant (such date is hereinafter sometimes referred to as the "Commencement Date") and expiring at midnight on May 31, 2004, unless sooner terminated or extended as hereinafter provided (the "Term").

3.2 Should Landlord be unable to deliver possession of the Demised Premises as provided in paragraph 7.2 hereof on November 1, 1979, the Commencement Date shall be postponed and Tenant shall accept such later possession and, provided Landlord shall have given Tenant at least 30 days written notice specifying the date on which it intends to deliver possession, the Term of this Lease shall commence on the date on which Landlord delivers possession of the Demised Premises to Tenant as provided in paragraph 7.2 hereof, but, should Landlord be unable to deliver such possession prior to August 1, 1980, this Lease shall thereupon automatically terminate and end, and the parties hereto shall thereupon be relieved of all liability hereunder. Such earlier or later possession shall not affect the aforesaid expiration date of the Term.

3.3 Tenant shall have four (4) successive options, to be exercised as hereinafter provided, to extend the Term of this Lease for four (4) consecutive extended terms of five (5) years each (each an "Extended Term"); provided that, in each case, the Primary Lease shall then extend for a period expiring on or after the expiration of such Extended Term; this Lease shall be in effect on the date of the exercise of such option; and no Event of Default shall have occurred and be continuing at the time of the commencement of such Extended Term. Tenant shall exercise

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each option to extend the Term of this Lease for an Extended Term by giving notice of such extension to Landlord not less than twelve (12) months prior to the beginning of such Extended Term. If Tenant fails to so notify Landlord of the exercise of any such option, all rights to extend or renew this Lease shall expire. If Tenant so notifies Landlord of the exercise of any such option, the Term of this Lease shall be automatically extended for the Extended Term with respect to which such option applied without execution of an extension agreement or renewal lease. Each Extended Term shall commence on the day next succeeding the expiration date of the Term as the same may have been extended, provided that no Event of Default shall have occurred and be continuing on such day, and shall expire at midnight on the day which is five (5) years after such previous expiration date, unless sooner terminated as hereinafter provided. Except as otherwise provided herein, each Extended Term shall be upon the same terms, covenants and conditions as those herein specified.

## ARTICLE 4

SUBJECT TO PRIMARY LEASE; COVENANT OF TITLE, AUTHORITY AND QUIET POSSESSION

4.1 Any ~~thing~~ herein to the contrary notwithstanding, it is expressly understood and agreed by and between Landlord and Tenant that this Lease is a sublease and is subject and subordinate to the Primary Lease, the Ground Lease, if any, and the Permitted Exceptions, if any; that no right, power or privilege granted to Tenant hereunder may be exercised or enjoyed by Tenant and no term, covenant or condition of this Lease benefiting Tenant or binding Landlord shall be operative if and to the extent that such exercise, enjoyment or operation would not be permitted by or would violate or be in conflict with any term, covenant or condition of the Primary Lease, the Ground Lease, or the Permitted Exceptions.

4.2 Landlord represents and warrants that Exhibit C contains a complete list of the lease or leases, and any amendments and modifications thereof heretofore made, which now constitute the Primary Lease and that Landlord has furnished to Tenant materially complete copies of the documents listed on Exhibit C, excluding any rent provisions together with materially complete copies of the lease or leases, and any amendments and modifications thereof heretofore made, which now constitute the Ground Lease, if any, excluding any rent provisions. Tenant represents and warrants that Tenant is thoroughly familiar with the terms, covenants and conditions of the Primary Lease and the Ground Lease, if any.

4.3 Tenant covenants and agrees that it will not violate or breach any of the terms, covenants or conditions of the Primary Lease, the Ground Lease, if any, and the Permitted Exceptions, if any, and that it will not do or permit anything which would violate, breach or be contrary to the Primary Lease, the Ground Lease or the Permitted Exceptions, and Tenant shall protect, indemnify, save harmless and, at Landlord's option, defend Landlord from and against all liabilities, obligations, claims, damages, penalties, causes of action, judgments, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or assessed against Landlord by reason of any violation or breach of the Primary Lease, the Ground Lease or said Permitted Exceptions by Tenant or any of its agents, contractors, sublessees, licensees, concessionaires or invitees. In no event shall Tenant have and/or enjoy any of the rights granted Landlord pursuant to Paragraphs 4, 7 (c), 11 (b), 12, 13, 14 (b), 14 (c), 15, 16, 17, 19 (d), 19 (e), and 28 of the Primary Lease except to the extent such rights are expressly granted to Tenant under this lease.

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4.4 Landlord represents and warrants that Landlord has a good leasehold or subleasehold estate in the Demised Premises under and by virtue of the Primary Lease and that Landlord has full right and lawful authority to enter into and perform Landlord's obligations under this Lease subject to the Primary Lease, the Ground Lease, if any, the Permitted Exceptions, if any, described in the Primary Lease and paragraph 4.1 hereof. Landlord represents and warrants that it is not now in default under the Primary Lease, the Ground Lease and/or the Permitted Exceptions and that (to the best of Landlord's information and belief) no event has occurred or circumstance presently exists which with notice or passage of time or both would constitute an event of default under the Primary Lease or the Ground Lease or which would violate the Permitted Exceptions. Landlord further covenants that, subject to the Primary Lease, the Ground Lease, said Permitted Exceptions and paragraph 4.1 hereof, if Tenant shall perform its covenants and discharge its obligations hereunder, Tenant shall have and enjoy, during the Term, the quiet and undisturbed possession of the Demised Premises, without hindrance or ejection by Landlord or any party claiming by, through or under Landlord, and Landlord will defend Tenant in the peaceful and quiet possession of the Demised Premises. Landlord further covenants that it will pay the rent pursuant to paragraphs 5 (a) and 5 (b) of the Primary Lease and that it will perform all of the covenants of Lessee under the Primary Lease (i) insofar as they relate to the Gas Station Parcel or (ii) insofar as they are not otherwise required to be performed by Tenant under this Lease..

## ARTICLE 5

### RENT

5.1 Tenant covenants to pay Landlord the rent provided in the Rent Rider which Tenant shall pay promptly as and when provided in the Rent Rider without notice or demand and without deduction or offset of any amount for any reason whatsoever.

## ARTICLE 6

### TAXES

6.1 The Tenant shall pay, as additional rent hereunder, on or before the last day on which they may be paid without penalty or interest, all Real Estate Taxes, water charges, meter charges, and other governmental charges (collectively "taxes") which shall be levied or assessed upon the Demised Premises, or any part thereof, during the Term of the Lease, with respect to any tax year or portion thereof during the Term except as otherwise provided in this Section with respect to the tax year in which the Term shall end and except as provided in Section 6.6; provided, however, that, if any Taxes may be paid in installments (whether or not interest shall accrue on the unpaid balance of such Taxes), the Tenant may pay each such installment (together with any accrued interest on the unpaid balance of such Taxes) on or before the last day upon which it may be paid without penalty or further interest; and provided, further, that if any such Taxes may be paid in installments, the Tenant shall be liable only for those installments which must be paid during the Term to avoid penalty unless payment of any such installment is postponed by the Tenant beyond the end of the Term, in which event the Tenant shall be liable for the payment of such installment when the same shall become due.

6.2 In the event the Demised Premises are not separately assessed, the following shall apply:

(a) "Larger Parcel" shall mean the Demised Land together with such additional portion of the land lying within Lot 1 of the Pumpkin Subdivision, but not extending beyond the bounds thereof, as shall constitute the tax lot in which the Demised Premises shall be included for the purpose of the assessment of Real Estate Taxes in the event that the Demised Premises shall not be separately assessed.

(b) If the Demised Premises are not separately assessed, Tenant shall pay to Landlord the sum of the following: (i) Real Estate Taxes assessed or levied on the land constituting the Larger Parcel multiplied by a fraction, the numerator of which shall be the number of square feet of land within the Demised Land and the denominator of which shall be the number of square feet of land within the Larger Parcel (including the Demised Land), plus (ii) Real Estate Taxes assessed or levied upon all improvements on the

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Larger Parcel multiplied by a fraction, the numerator of which shall be the number of square feet of floor area within all improvements on the Demised Land and the denominator of which shall be the aggregate number of square feet of floor area with all improvements on the Larger Parcel (including those on the Demised Land).

6.3 Notwithstanding anything to the contrary herein contained, if the Tenant deems excessive or illegal any Taxes payable by the Tenant under Section 6.1, the Tenant may defer payment thereof so long as the validity or the amount thereof is contested by the Tenant in good faith by appropriate proceedings, in which event the Tenant shall, at the request of the Landlord, furnish reasonable assurance satisfactory to the Landlord indemnifying the Landlord against any loss or liability by reason of such contest; provided, however, that if at any time payment of the whole or any part of such Taxes shall become necessary in order to prevent any forfeiture or loss of the Demised Premises or any part thereof because of nonpayment of such Taxes, then the Tenant shall pay the same together with all penalties and interest thereon, if any, in time to prevent such forfeiture or loss. Any contest, whether before or after payment, may be made in the name of the Landlord or the Tenant or both, as the Tenant shall determine, but if the name of the Landlord is used therein, the Landlord shall be notified thereof at least 15 days prior to commencement of the proceeding. In the event Landlord shall not consent to the use of its name in such proceeding, it shall so notify Tenant (it being understood, however, that such consent shall not be unreasonably withheld). The Landlord may at its own expense, but shall not be required to, participate actively in any such contest, but the direction of such contest shall be under the control of the Tenant, and the Tenant shall be entitled to any refund of any such Taxes and penalties or interest thereon which have been paid by the Tenant, or by the Landlord and reimbursed by the Tenant to the Landlord.

6.4 In case of failure of the Tenant to make any of the payments to be made by the Tenant as provided in Sections 6.1, 6.2 and 6.3, the Landlord may pay the amount of any such Taxes with penalties and interest thereon, if any, and the amount so paid by the Landlord, with interest thereon at the maximum legal rate from the date of payment thereof by the Landlord, shall be added to and become part of the next installment of rent.

6.5 Insofar as Gross Receipts Taxes are concerned, Landlord shall pay any such Taxes attributable to its lesser pursuant to the Primary Lease and Tenant shall pay any such Taxes attributable to Landlord, Tenant and/or this lease.

6.6 Tenant shall be liable only for such proportion of the Real Estate Taxes levied or assessed upon the Demised Premises or any part thereof, for the tax year in which the Full Commencement Date occurs as the part of such tax year during which the Term (after the Full Commencement Date) shall be in effect shall bear to the whole of such tax year.

6.7 Upon the expiration or termination of the Term, the Tenant shall be liable only for such proportion of Taxes levied or assessed upon the Demised Premises, or any part thereof, for the tax year in which the Term shall end as the part of such tax year during which the Term shall be in effect shall bear to the whole of such tax year.

6.8 Written evidence of the payments of Taxes hereunder shall be furnished by Tenant to Landlord upon Landlord's written request therefor.

## ARTICLE 7

### LANDLORD'S WORK, DELIVERY OF PREMISES, TENANT'S WORK

7.1 Landlord shall perform the Landlord's Work or cause the same to be performed in a good and workmanlike manner.

7.2 Landlord shall deliver physical possession of the Demised Premises to Tenant on the Commencement Date, free and clear of all tenancies and occupancies. Landlord's Work shall be substantially completed prior to the Full Commencement Date. Possession of the Demised Premises shall be deemed delivered by Landlord to Tenant on the date on which Landlord gives written notice to Tenant stating that possession is thereby delivered to Tenant.

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7.3 Tenant, at Tenant's sole cost and expense, shall perform Tenant's Work or cause the same to be performed in a good and workmanlike manner, in compliance with the following requirements of the Primary Lease relating to the alteration of the improvements on the Demised Premises: The Work shall (i) not reduce the fair market value of the Demised Premises below its value immediately before such alteration or addition, or impair the usefulness of the Demised Premises, (ii) be effected with due diligence, in a good and workmanlike manner and in compliance with all Legal Requirements and Insurance Requirements, and (iii) be promptly and fully paid for by Tenant. The Work shall be performed in accordance with plans and specifications approved by Landlord as hereinafter provided and in accordance with any other requirements of this Lease. Tenant, at Tenant's sole cost and expense, shall prepare or cause to be prepared complete plans and specifications for the Tenant's Work and shall submit at least two sets of such complete plans and specifications to Landlord or Landlord's designated representative for approval. The plans and specifications to be submitted to Landlord for approval shall not be required to include fixture layout, decor and interior signage. All such plans and specifications shall meet the requirements of this Lease and the requirements of the Primary Lease hereinafter set forth. Tenant shall not commence or permit its contractors to commence the Tenant's Work until the plans and specifications shall have been approved in writing by Landlord or by Landlord's designated representative so designated in writing. Such plans and specifications shall be submitted to Landlord's Construction Services Department, c/o George L. Bridwell, J. C. Fenney Company, Inc., 105 Tollview Drive, Rolling Meadows, Illinois 60008. It is understood that the said plans and specifications shall not be disapproved by Landlord unless such improvements or alterations would (a) reduce the fair market value of the Demised Premises below its value immediately before such alteration or addition or (b) impair the usefulness of the Demised Premises or (c) impair or damage the Demised Premises structurally. All the plans and specifications shall carry the following legend on its face: "Failure to respond within 20 days after receipt shall be deemed to indicate approval of these plans and specifications by Landlord". It is understood that in the event such plans and specifications are not disapproved by Landlord within 20 days after receipt of same, same shall be deemed approved by Landlord. Tenant, at Tenant's sole cost and expense shall employ for the Tenant's Work only licensed, bonded, responsible contractors, shall furnish to Landlord, prior to the commencement of any such work, a completion and payment bond with respect to such work, in Landlord's favor and with a surety and upon terms and conditions acceptable to Landlord, provided, however, that such bond shall not be required so long as named Tenant is the Tenant and has a then current Net Worth in excess of \$200,000,000.00. At all times during the course of Tenant's Work, Tenant, at Tenant's sole cost and expense shall (i) carry "all risk" builders risk insurance for the full replacement value of the Tenant's Work naming Tenant, Landlord and the lessors under the Primary Lease and the Ground Lease, if any, as insureds as their respective interests may appear, and (ii) cause each of Tenant's contractors to carry (a) workers' compensation insurance affording protection under the workers' compensation law of the State of Illinois, (b) employer's liability insurance in an amount equal to the limit set forth for the Tenant's employers liability insurance in Article 13 hereof and (c) comprehensive general liability insurance covering the contractor, Tenant, Landlord and the lessors under the Primary Lease and Ground Lease, if any, for the acts of the contractor and its subcontractors and their respective materialmen, laborers, employees, and officers on the Demised Premises in amounts equal to the limits set forth for the Tenant's comprehensive general liability insurance in Article 13 hereof. Such insurance shall be carried with companies licensed to do business in Illinois and Tenant shall furnish to Landlord prior to the commencement of any such work certificates which evidence that such insurance is in force and provide that no cancellation thereof shall be effective until at least 20 days after receipt by Landlord of written notice of such cancellation, material change or renewal. It is understood, however, that such insurance coverage shall not be required so long as the named Tenant is the Tenant and has a then current Net Worth in excess of \$200,000,000.00. Anything to the contrary herein notwithstanding, Tenant does hereby indemnify and agree to hold Landlord and the lessor under the Primary Lease harmless as to the payment bond and insurance coverages required pursuant to this Paragraph 7.3. Within 120 days after completion of Tenant's Work, Tenant shall deliver to Landlord (a) a certification, executed by a Vice President of Tenant, in form satisfactory to Landlord, setting forth the cost of Tenant's Work and (b) two complete sets of final plans showing the Tenant's Work.

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7.4. It is understood that for purposes of the Primary Lease, Tenant's Work shall be deemed to have been constructed or contracted for by Landlord. The preceding sentence shall not, however, be deemed to make Tenant's contractors third-party beneficiaries of this Lease.

## ARTICLE 8

### USE

8.1 Tenant is granted the right to occupy and use the Demised Premises for any lawful purpose, subject to the terms of the Primary Lease and the Ground Lease and to Permitted Exceptions restricting the use of the Demised Premises.

8.2 In the event Tenant or its subtenants or assignees shall sell or give away any fermented, spirituous, alcoholic or other intoxicating liquor ("Liquor") on or from the Demised Premises:

Tenant covenants and agrees to save and keep harmless the Landlord, the Lessor under the Primary Lease and the Demised Premises, from any and all suits, demands, claims, damages, fines, liens, penalties, judgments, costs and expenses whatsoever which may result to the aforesaid parties or to the Demised Premises, and to any and all improvements at any time situated thereon, under and by force of any provisions of any present or future statute of the United States of America, or the state or city wherein the Demised Premises are situated, concerning the manufacture, storage, sale, use or giving away of fermented, spirituous, alcoholic or other intoxicating liquor. Tenant shall procure and maintain during the term of the lease so long as liquor is sold or given away on or from the Demised Premises one or more policies of insurance issued by carrier or carriers and in form satisfactory to Landlord, with the broadest coverage obtainable, saving harmless and indemnifying the Landlord and the Lessor under the Primary Lease against any and all payments, demands, damages, judgments, liens, costs and expenses for which claim shall ever be made against the aforesaid parties or any of them by any person or persons who shall have been injured in any way in consequence of the intoxication, habitual or otherwise, of any person or persons resulting directly or indirectly from the sale, distribution, use or giving away of fermented, spirituous, alcoholic or other intoxicating liquor in, on or from the Demised Premises, and for which injury or injuries, the Landlord, the Lessor under the Primary Lease, or any of them, may be liable under or by virtue of any statute, rule of law, ordinance or governmental measure, making any of the aforesaid parties liable to pay to any person or persons any money or damages on account of any injury or injuries whatsoever resulting directly or indirectly from the manufacture, storage, sale, use, distribution or giving away of fermented, spirituous, alcoholic or other intoxicating liquor in, on or from the Demised Premises. The amount of insurance for which Tenant shall pay the premiums shall be limited to the sum of \$2,000,000 on account of injury resulting from the intoxication of one person and the sum of \$5,000,000 on account of all injuries, both sums being exclusive of all expenses incurred by the carrier or carriers for the payment of which the carrier or carriers is or are liable. Notwithstanding the foregoing, named Tenant may comply with the insurance provisions of the preceding sentence by self-insurance so long as it has a Net Worth in excess of \$200,000,000.00. The existence of such policy or policies shall not limit or affect Tenant's above stated understanding to save and keep the aforesaid parties harmless. Tenant shall deliver evidence of the issuance of the policy or policies to Landlord.

## ARTICLE 9

### UTILITY SERVICES

9.1 Gas, Electricity, Water and Sewer. Tenant shall arrange for its own gas, electricity, water, sanitary sewer and other utility service and shall pay, when billed, for all such services used in or about the Demised Premises.

9.2 Interruption of Service. Landlord shall not be liable in damages or otherwise if any utility service or other service to the Demised Premises shall be interrupted or impaired.

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## ARTICLE 10

### GOVERNMENTAL REGULATIONS

10.1 Tenant shall observe and comply with all rules, orders, and regulations of all duly constituted public authorities. Tenant shall have the right, however, to contest, without cost to Landlord, the validity or application of any such rule, order or regulation and may postpone compliance therewith until the final determination of any such proceeding. Tenant shall, protect, indemnify, save harmless and, at Landlord's option, defend Landlord from and against all liabilities, obligations, claims, damages, penalties, causes of action, judgments, costs and expenses (including, without limitation, reasonable attorney's fees and expenses) imposed upon or incurred by or during the Term of this Lease by reason of Tenant's failure to so observe and comply.

## ARTICLE 11

### FIXTURES

11.1 All trade fixtures in the Landlord's Building as of the date of this Lease (other than office equipment, cash registers and associated electronics, machinery equipment and fixtures in the "Record" Department if owned by other than Landlord), shall for purposes of this Lease be considered as belonging to Tenant effective as of the Commencement Date. Furthermore, all such trade fixtures (which are being sold to Tenant by a separate Bill of Sale), as well as signs, trade fixtures, merchandise and personal property owned by Tenant and installed in or on the Demised Premises shall remain the property of Tenant and shall be removable from time to time and also at the expiration or termination of the Term of this Lease, provided Tenant shall not at such time be in default under any covenant or agreement contained herein, and provided further Tenant shall repair any damage to the Demised Premises caused by such removal. All leasehold improvements installed within the Demised Premises by Tenant (including without limitation, the Tenant's Work, floor covering and lighting equipment) shall, upon termination of the term of this Lease, be the property of Landlord.

## ARTICLE 12

### CARE OF THE PREMISES, ALTERATIONS, SIGNS

12.1 Tenant at its expense will keep the Demised Premises and the adjoining sidewalks, curbs, vaults and vault space, if any, and ways in good and clean order and condition, ordinary wear and tear excepted, and will promptly make all necessary or appropriate repairs, replacements and renewals thereof, whether interior or exterior, structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen. All repairs, replacements and renewals shall be equal in quality to the original work. Tenant at its expense will do or cause others to do all shoring of the Demised Premises or of the property adjoining thereto or of foundations and walls of the improvements on the Demised Land and every other act necessary or appropriate for the preservation and safety thereof by reason of or in connection with any excavation or other building operation upon the Demised Premises or any adjoining property, whether or not Landlord or any adjoining property owner shall, by any Legal Requirement, be required to take such action or be liable for failure to do so. Landlord shall not be required to maintain, alter, repair, rebuild or replace the Demised Premises or any part thereof, or to maintain the Demised Premises or any part thereof, in any way, and Tenant expressly waives the right to make repairs at the expense of Landlord which may be provided for in any law now in effect or hereafter enacted.

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12.2 Tenant, at its expense, may make alterations of and additions or other improvements to the Demised Premises subject to the requirements for Tenant's Work set forth in Paragraph 7.3.

12.3 Following completion of the Tenant's Work, Tenant shall have the right to make such interior, non-structural alterations and additions in the Demised Premises as may be necessary for the proper conduct of its business and the use of the Demised Premises as permitted herein; provided that such alterations and additions will not diminish the value of Tenant's leasehold improvements and that any such alterations or additions shall be made by Tenant in accordance with the provisions of paragraph 7.3 hereof, in the same manner and subject to the same approvals and provisions as provided in said paragraph for the Tenant's Work. It is understood, however, that the preceding provisions of this Paragraph 12.3 shall not be deemed to apply so long as the named Tenant remains Tenant hereunder; provided, however, that while the named Tenant remains Tenant hereunder, the following shall be deemed to apply:

"Tenant shall have the right to make such interior, non-structural alterations and additions to the Demised Premises as may be necessary for the proper conduct of its business in the use of the Demised Premises as permitted herein; provided that such alterations and additions shall (i) not reduce the fair market value of the Demised Premises below its value immediately before such alteration or addition, or impair the usefulness of the Demised Premises, (ii) be affected with due diligence, and in a good and workmanlike manner and in compliance with all Legal Requirements and Insurance Requirements, (iii) be promptly and fully paid for by Tenant, and (iv) not impair or damage the Demised Premises structurally. In the event the foregoing conditions are satisfied with respect to interior non-structural alterations and additions, the same may be made without the necessity of approvals or notices required under paragraph 7.3 hereof."

12.4 Anything to the contrary herein notwithstanding, any alterations or additions or other improvements to the Demised Premises (i) shall not reduce the fair market value of the Demised Premises below its value immediately before such alteration or addition, or impair the usefulness of the Demised Premises, (ii) shall be effected with due diligence, in a good and workmanlike manner and in compliance with all legal, insurance and other requirements of the Primary Lease, and (iii) shall be promptly and fully paid for by Tenant. With respect to all such alteration, additions and improvements shall, upon termination of the term of this Lease, vest in Landlord and all thereof shall be part of the Demised Premises.

## ARTICLE 13

### INSURANCE

13.1 Fire and Extended Coverage Insurance So long as the Tenant maintains a Net Worth of at least [REDACTED], the Tenant shall not be required to maintain insurance under this Article 13 and the provisions of this Article shall not apply to any insurance maintained by the Tenant. At all other times the Tenant, at its expense, will maintain, or cause to be maintained, with responsible insurance companies licensed to do business in the State of Illinois (i) insurance with respect to any and all buildings and other improvements (including, without limitation, Landlord's Building) situated on the Demised Land against loss or damage by fire, lightning and such other risks as are, from time to time, included in coverage of the type known as extended coverage in an amount which will prevent any insured from being a coinsurer and in any event in an amount representing not less than 90% of the full replacement

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value thereof (excluding foundation and excavation costs), less physical depreciation, as determined at the request of Landlord and at Tenant's expense by the insurer or insurers or by an expert approved by Landlord, as the case may be, (ii) explosion insurance in respect of any boilers and similar apparatus located in the Demised Premises in an amount of \$500,000, and (iii) war risk insurance, when and to the extent available and usually maintained, and in the amounts usually carried, by persons operating like of similar properties in the vicinity of the Demised Premises. The insurance referred by this Section shall be issued in the names of Landlord, Tenant, the lessors under the Primary Lease and the Ground Lease as their respective interests may appear, shall be maintained with companies approved by Landlord and licensed to do business in the State of Illinois and shall provide that Landlord shall be given 30 days prior written notice of cancellation, material change or renewal. Such insurance may be maintained in whole or in part under a blanket policy covering other locations. Tenant shall furnish to Landlord certificates or, at Landlord's request, copies of policies which evidence that such insurance is in effect.

**13.2 Public Liability Insurance by Tenant.** Throughout the Term of this Lease, Tenant shall maintain in force and effect at its expense a policy or policies of public liability insurance with respect to the Demised Premises and the business of Tenant and its sublessees, licensees or concessionaires, with companies licensed to do business in the State of Illinois with limits of liability per occurrence of not less than: \$5,000,000 for injury to or death of persons, and \$1,000,000 for loss of or damage to property, or \$5,000,000 combined single limit for injury to or death of persons and loss of or damage to property. Such policy or policies of public liability insurance shall name Tenant, Landlord and the lessors under the Primary Lease and the Ground Lease, if any, as insureds, shall be maintained with companies approved by Landlord and licensed to do business in the State of Illinois and shall provide that Landlord shall be given 30 days prior written notice of cancellation, material change or renewal. Such insurance may be maintained in whole or in part under a blanket policy covering other locations. Tenant shall furnish to Landlord certificates or, at Landlord's request, copies of policies which evidence that such public liability insurance is in effect.

**13.3 Workers' Compensation by Tenant.** Tenant shall keep in force and effect at its expense workers' compensation insurance and employer's liability insurance affording (a) protection under the workers' compensation law of the State of Illinois and (b) employer's liability protection subject to a limit of not less than \$1,000,000. At the written request of Landlord, Tenant shall furnish to Landlord certificates or, at Landlord's request, copies of policies which evidence that such insurance is in effect.

**13.4 Waiver of Subrogation.** Anything in this Lease to the contrary notwithstanding, it is agreed that each party (the "Releasing Party") hereby releases the other (the "Released Party") from any liability with respect to loss of or damage to property which the Released Party would, but for this paragraph, have had to the Releasing Party during the Term of this Lease, resulting from the occurrence of any accident or occurrence or casualty (a) which is or would be covered by a fire and extended coverage policy (with vandalism and malicious mischief endorsements attached) or by a sprinkler leakage, boiler and machinery or water damage policy in the State of Illinois (irrespective of whether such coverage is being carried by the Releasing Party), and (b) which is covered by any other casualty or property damage insurance being carried by the Releasing Party at the time of such occurrence, which casualty may have resulted in whole or in part from any act or neglect of the Released Party; and, insofar as Tenant is the Releasing Party, Tenant hereby releases from any such liability the lessor under the Primary Lease and the lessor under the Ground Lease, if any.

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13.5 If the Tenant shall fail to effect or maintain any insurance which the Tenant is obligated to effect or maintain under the terms of this Article, the Landlord may (but shall not be liable for its failure so to do) effect the same as the agent of the Tenant by taking out policies in such insurance companies as may be selected by the Landlord, running for a period not exceeding one year. The Tenant shall pay on demand any amount properly paid by the Landlord for such purpose, with interest thereon at the maximum legal rate from the date of payment thereof by the Landlord, and in the case of the failure of the Tenant so to pay, such amount shall be added to and become part of the next installment of rent and shall become and thereafter for all purposes be additional rent, and the Landlord shall have the same remedies for the collection thereof or otherwise as in the case of default in the payment of the rent hereby reserved.

(Paragraph 13.6 intentionally omitted.)

13.7 The insurance limits set forth in Sections 7.3 and 8.2 and in this Article 13 shall be adjusted as of the first day of each calendar year ending in "2" and "7" by multiplying each such limit by a fraction having as its numerator the index figure for the second month immediately preceding the commencement of the five-year period for which such adjustment is being made shown on the Revised (1978) Consumer Price Index for Urban Wage Earners and Clerical Workers, U.S. City Average, All Items (1967 - 100) published by the Bureau of Labor Statistics of the U. S. Department of Labor and having as its denominator the index figure shown on such index for the month of November, 1979. If at any time said index shall not be published and available for the purpose of making the aforesaid computation, and if Landlord and Tenant shall not have agreed upon a substitute index and the manner of its use within 30 days after either party shall have notified the other party hereto of the unavailability of the above described index for such purpose, then and in such event the question of how the aforesaid computation shall be made to carry out the intent of this clause shall be settled by arbitration in accordance with the then existing commercial arbitration rules of the American Arbitration Association and the decision of the arbitrator or arbitrators in any such proceeding shall be final and binding upon the parties hereto.

## ARTICLE 14

### TENANT INDEMNIFICATION

14.1 Tenant shall protect, indemnify, save harmless and, at Landlord's option, defend Landlord from and against all liabilities, obligations, claims, damages, penalties, causes of action, judgments, costs and expenses (including, without limitation, reasonable attorney's fees and expenses) imposed upon or incurred by or asserted against Landlord or the Demised Premises during the Term of this Lease, except to the extent caused by the willful act or negligence of Landlord, by reason of (a) any accident or injury to or death of persons or loss of or damage to property occurring in the Demised Premises or any part thereof, (b) any use or condition of the Demised Premises or any part thereof or any signs appurtenant thereto, (c) any failure on the part of Tenant or any of its agents, contractors, sublessees, licensees, concessionaires or invitees to perform or comply with any of the terms of this Lease or (d) any negligence or tortious act on the part of Tenant or any of its agents, contractors, sublessees, licensees, concessionaires or invitees. In case any action, suit or proceeding is brought against Landlord by reason of any such occurrence, Tenant, upon request of Landlord shall at Tenant's expense defend such action, suit or proceeding with counsel designated by Landlord.

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## ARTICLE 15

### MECHANICS LIENS

15.1 Tenant agrees to promptly pay all sums of money in respect of any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to Tenant in, at or about the Demised Premises, or furnished to Tenant's agents, employees, contractors or subcontractors, which may be secured by any mechanic's, materialman's, supplier's or other lien against the Demised Premises or any part thereof. In the event any such or similar lien shall be filed, Tenant shall within 24 hours of receipt of notice of such lien give notice to Landlord thereof, and Tenant shall, within 30 days after receipt of notice of such lien, discharge the same by payment of the amount due the lien claimant. However, Tenant may in good faith contest such lien provided that within such 30 day period Tenant provides Landlord with a surety bond acceptable to Landlord, protecting against said lien in an amount at least one and one-half times the amount claimed as a lien or in the alternative, so long as named Tenant has a Net Worth in excess of \$200,000,000.00, Tenant hereby agrees to indemnify and hold Landlord harmless against any loss or damage sustained by reason of such lien. Failure of Tenant to discharge the lien, or if contested to provide such bond (if applicable) shall constitute a default under this Lease and in addition to any other right or remedy of Landlord, Landlord may but shall not be obligated to discharge the same of record by paying the amount claimed to be due, and the amount so paid by Landlord and all costs and expenses incurred by Landlord therewith (including, without limitation, reasonable attorneys' fees and expenses) shall be due and payable by Tenant to Landlord, on demand, as additional rent, with interest thereon at the rate of 10% per annum but not in excess of the maximum legal rate payable in the state of Illinois.



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## ARTICLE 16

### ASSIGNMENT OR SUBLETTING

16.1 Tenant agrees not to sell, mortgage, pledge, franchise or in any manner transfer this Lease or any estate or interest thereunder; provided, however, that Tenant shall be permitted to assign (but not for purposes of mortgaging or pledging) this Lease or sublet the Demised Premises or any part or parts thereof on the express understanding that named Tenant shall remain liable and responsible under this Lease, that such right to assign or sublet shall be of no further force and/or effect in the event Tenant's Net Worth is at any time reduced below \$200,000,000.00 and that Tenant shall, within three days after the execution and delivery of any such assignment, deliver a conformed copy thereof to Landlord and within three days after the execution and delivery of any such sub-lease, shall give notice to Landlord of the existence and terms of such sub-lease and of the name and address of the sub-tenant.

16.2 Landlord may sell, assign or otherwise transfer Landlord's interest in this Lease at any time and without qualification; provided, however, that Landlord shall remain liable for Landlord's covenants under this Lease. Upon the sale, assignment or other transfer of Landlord's interest in this Lease, Tenant agrees to recognize and attend to purchaser, assignee or other transferee as Landlord, and Tenant further agrees to execute and deliver a recordable instrument setting forth the provisions of this paragraph.

## ARTICLE 17

### CONDEMNATION

17.1 Any award or payment to which Landlord or Tenant may be or become entitled by reason of any taking of the Demised Premises or part thereof, in or by Condemnation, whether the same shall be paid or payable in respect of Tenant's leasehold interest hereunder or otherwise, shall be paid to Landlord to be held as provided in this Article 17. Such Award or payment less Tenant's moving expenses occasioned by such taking and less any portion of the award for the taking of Tenant's trade fixtures and less any cost and expense incurred in collecting such award or payment is herein called the "net award". The Lessor under the Primary Lease and his mortgagee shall be entitled to participate fully in any such proceedings and the reasonable costs and expenses of such participation (including reasonable attorneys' fees and expenses) shall be paid by Landlord.

17.2 If during the initial term of this Lease, (i) the entire Demised Premises shall be taken in or by Condemnation, or (ii) a substantial portion of the Demised Premises, which shall be sufficient in Tenant's judgment to render the remaining portion unsuitable for Tenant's continued use and occupancy, shall be taken in or by such proceedings, Tenant shall, in lieu of effecting restoration pursuant to Section 17.4, within fifteen (15) days after such taking, give notice to Landlord of Tenant's intention to terminate this Lease on the first Basic Rent Payment Date occurring not less than 75 days after the delivery of such notice, provided that such notice shall be accompanied by (in the event that less than the entire Demised Premises shall be taken) a certificate of Tenant signed by a vice president and dated currently, stating that the remainder of the Demised Premises is unsuitable for Tenant's continued use or occupancy and the right thereto shall be assigned to and shall belong to Landlord. On the Basic Rent Payment Date this Lease shall terminate except with respect to obligations and liabilities of Tenant under this Lease, actual or contingent which have arisen on or prior to such Basic Rent Payment Date, but only upon payment by Tenant of all rent and other sums due and payable by it under this Lease to and including such Basic Rent Payment Date.

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17.3 If, during any Extended Term of this Lease (i) the entire Demised Premises shall be taken in or by Condemnation, or (ii) a substantial portion of the Demised Premises, which shall be sufficient in Tenant's judgment to render the remaining portion unsuitable for Tenant's continued use or occupancy, shall be taken in or by any such proceedings, Tenant may, in lieu of effecting restoration pursuant to Section 17.4 within fifteen (15) days after such taking, give notice to Landlord that it will on the first Basic Rent Payment Date occurring not less than 75 days after the delivery of such notice, terminate this Lease, and if Tenant shall give such notice of termination, Tenant shall pay to Landlord the net award actually received by Tenant, or if such net award shall not have been received by Tenant, Tenant shall assign to Landlord its interest and right in and to such net award and this Lease shall terminate on such Basic Rent Payment Date, except with respect to obligations and liabilities of Tenant under this Lease, actual or contingent which have arisen on or prior to such Basic Rent Payment Date, upon payment by Tenant of all rent and all sums due and payable by it under this Lease to and including such Basic Rent Payment Date.

17.4 If (i) a portion of the Demised Premises shall be taken in or by Condemnation and this Lease shall not be terminated, or (ii) the use or occupancy of the Demised Premises or part thereof shall be temporarily requisitioned by any governmental authority, civil or military, then this Lease shall continue in full force and effect, and Tenant shall, promptly after any such taking and at its cost and expense, promptly and diligently commence and complete the restoration of the Demised Premises, provided that in the case of a temporary requisition, Tenant shall not be required to effect restoration until such requisition is terminated. In case of any such lesser taking in or by such proceedings, Tenant shall apply the net award actually received by Tenant to the cost of restoration and, if the net award shall have been paid to Landlord as provided in Section 17.1 Tenant may, from time to time after the commencement of restoration, but not more often than once in any period of 30 days, request by notice to Landlord that Landlord pay to Tenant an amount sufficient to reimburse Tenant for the previously unreimbursed cost and expense of restoration, and upon receipt by Landlord of a certificate of Tenant, signed by a vice president and dated the date of such request, setting forth in reasonable detail the total amount of such unreimbursed cost and expense actually incurred by Tenant and not previously certified by Tenant, and stating that no event of default has happened and is continuing hereunder, Landlord shall pay to Tenant the amount so certified, to the extent of the net award received by Landlord by reason of such taking and remaining after the making of all previous reimbursements to Tenant. After the completion of restoration, Landlord shall pay to Tenant the balance of the net award received by Landlord and remaining after making all previous reimbursements to Tenant, upon receipt by Landlord of a certificate of Tenant, signed by a vice president, stating that restoration has been completed as provided in this Section 17.4 and that no default has occurred and is continuing under this Lease. If the cost of restoration required to be made by Tenant pursuant to this Section 17.4 shall exceed the amount of the net award, the deficiency shall be paid by Tenant. In any case in which Tenant may be entitled to reimbursement of any expenses or to payment of any award by Landlord, Tenant shall be entitled to participate in any proceeding to determine the amount of such award, and no settlement with the taking or condemning authority or agency shall be made without the consent of Tenant, which consent shall not be unreasonably withheld. The term "restoration" as utilized in this Article 17 and as utilized in Article 18 shall be deemed to mean the restoration, replacement or rebuilding of the improvements (including, without limitation, Landlord's Building) on the Demised Land as nearly as possible to their value and condition immediately prior to damage, destruction, condemnation, partial taking or requisition.

17.5 For purposes of this Lease, all amounts paid pursuant to any agreement with any condemning authority which has been made in settlement of any Condemnation affecting the Demised Premises shall be deemed to constitute an award made in such proceeding.

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## ARTICLE 18

### DAMAGE CLAUSE

18.1 In case of any material damage to or destruction of the Landlord's Building or any part thereof or of any other improvements on the Demised Land or any part thereof, Tenant will immediately give notice thereof to Landlord, generally describing the nature and extent of such damage or destruction and setting forth Tenant's best estimate of the cost of restoration. In case of any damage to or destruction of the Landlord's Building or any part thereof or of any other improvements on the Demised Land or any part thereof other than a destruction resulting in the termination of this Lease pursuant to paragraph 18.3, Tenant, whether or not the insurance proceeds, if any, on account of such damage or destruction shall be sufficient for the purpose at its expense will (subject to Force Majeure) promptly commence and complete restoration of the Landlord's Building and the said other improvements and this Lease shall continue in full force and effect.

(Paragraph 18.2 intentionally omitted.)

18.3 IF during the initial term of this Lease, Landlord's Building or any part thereof shall be substantially damaged or destroyed in any single casualty so that, in the judgment of Tenant the said Building shall be unsuitable for restoration for Tenant's continued use and occupancy, then, in lieu of effecting restoration of the said Building, Tenant shall give notice to Landlord within fifteen (15) days after such damage or destruction, of Tenant's intention to terminate this Lease on the first Basic Rent Payment Date occurring not less than 75 days after the delivery of such notice, provided that such notice shall be accompanied by a certificate of Tenant, signed by a vice president and dated currently, stating that Landlord's Building is unsuitable for restoration for Tenant's continued use and occupancy and will not be restored. If Tenant elects to terminate this Lease under the provisions of this Section 18.3, the proceeds of any insurance required under Section 13.1 of this Lease, which are payable in connection with such damage or destruction, less any cost and expense incurred in collecting such proceeds (such proceeds less such cost and expense being herein called the "net proceeds"), and the right thereto, shall be assigned to and shall belong to Landlord. If Tenant shall not be required to maintain insurance under Section 13.1, Tenant shall pay Landlord an amount (herein called the "substitute proceeds", equal to the net proceeds of insurance that would have been payable in connection with such damage or destruction if Tenant had maintained the insurance provided for in Section 13.1, and in either case this Lease shall terminate on such Basic Rent Payment Date, except with respect to obligations and liabilities of Tenant under this Lease, actual or contingent, which have arisen on or prior to such Basic Rent Payment Date, but only upon payment by Tenant of all rent and other sums due and payable by it under this Lease, to and including such Basic Rent Payment Date.

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18.4 If during any of the Extended Terms referred to in Section 3.3 of this Lease, Landlord's Building or any part thereof shall be substantially damaged or destroyed in any single casualty so that the Landlord's Building shall be unsuitable for restoration in Tenant's judgment for Tenant's continued use and occupancy, Tenant may, within fifteen (15) days after such damage or destruction, give notice to Landlord that it will on the first Basic Rent Payment Date occurring not less than 75 days after the delivery of such notice, terminate this Lease, and if Tenant shall give such notice of termination, the net proceeds of any insurance required by Section 13.1 of this Lease shall be assigned to and shall belong to Landlord, or if Tenant shall not be required to insure under said Section 13.1, Tenant shall pay Landlord the substitute proceeds, and in either case this Lease shall terminate on such Basic Rent Payment Date, except with respect to obligations and liabilities of Tenant under this Lease, actual or contingent, which have arisen on or prior to such Basic Rent Payment Date, upon payment by Tenant of all rent and all sums due and payable by it under this Lease to and including such Basic Rent Payment Date.

18.5 In addition to restoration of Landlord's Building and the other improvements on the Demised Land, Tenant shall also restore Tenant's leasehold improvements (including, without limitation, floor covering and lighting equipment) made to, installed on or located in the Demised Premises to a useful condition as similar as possible to the condition prior to such damage or destruction.

## ARTICLE 19

### SURRENDER OF PREMISES

19.1 This Lease shall terminate at the end of the original Term hereof, or any extension or renewal thereof, as the case may be, without the necessity of any notice from either Landlord or Tenant to terminate the same, and Tenant hereby waives any requirement of notice to vacate the Demised Premises and agrees that Landlord shall be entitled to the benefit of all provisions of law with respect to the summary recovery of possession of premises from a tenant holding over to the same extent as if any required notice had been given.

19.2 On the last day of the Term or on the earlier termination thereof, Tenant shall peaceably surrender the Demised Premises in good order, condition and repair, broom-clean, and reasonable wear and tear only excepted. Tenant shall at its expense remove its trade fixtures, signs, merchandise and personal property (but not the Tenant's Work, floor covering and lighting equipment) from the Demised Premises and any property not removed may at Landlord's option be removed at Tenant's expense or be deemed abandoned and become Landlord's property. Any damage caused by Tenant in the removal of such items shall be repaired by and at the Tenant's expense. All alterations, additions, improvements and fixtures (other than Tenant's trade fixtures and signs) which shall have been made or installed by either Landlord or Tenant upon the Premises (including, without limitation, the Tenant's Work, floor covering and lighting equipment) shall remain upon and be surrendered with Demised Premises as a part thereof, without disturbance, molestation or injury, and without charge, at the expiration or termination of this lease. If the Demised Premises shall not be surrendered to Landlord as heretofore required, Tenant shall indemnify Landlord against all liabilities, obligations, claims, damages, penalties, causes of action, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against Landlord by reason of any delay by Tenant in so surrendering the Demised Premises (including, without limitation, these asserted by any succeeding tenant founded on such delay) or failure to leave the Demised Premises in the condition required hereunder. Tenant shall promptly surrender all keys for the Demised Premises to Landlord and shall inform Landlord of the combinations on all combination locks and safes on the Demised Premises.

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## ARTICLE 20

### HOLDING OVER

20.1 In the event Tenant remains in possession of the Demised Premises after the expiration of this Lease and without the execution of a new lease, it shall be deemed to be occupying the Demised Premises as a tenant from month to month, subject to all conditions, provisions and obligations of this Lease in so far as the same can be applicable to month-to-month tenancy cancellable by either party upon 30 days written notice to the other.

## ARTICLE 21

### GAS STATION PARCEL

Landlord agrees for the benefit of the Demised Land that (i) any building constructed on the Gas Station Parcel shall not exceed the lesser of fourteen (14') feet and one (1) story in height, (ii) the parking ratio on the Gas Station Parcel shall comply with local code, (iii) the length of building on the Gas Station Parcel fronting on Cicero Avenue shall not exceed 125 feet, (iv) the square footage of building (s) on the Gas Station Parcel shall not exceed that square footage permitted by local code, (v) no pylon signs shall be permitted on the Gas Station Parcel, (vi) access and curb cuts from the Gas Station Parcel to the Demised Land shall be subject to the approval of the Tenant, which approval shall not be unreasonably withheld and (vii) no sign (except a monument type sign not higher than ten (10) feet above the ground level of the Gas Station Parcel) shall be located except on the structure or between the structures on the Gas Station Parcel and Cicero Avenue and no sign shall extend higher than five (5) feet above the top of the present structure or twenty-four (24) feet above the ground level of the Gas Station Parcel, whichever is the higher. Notwithstanding the provisions of the immediately preceding clause (vi), a flagpole extending not higher than sixty-five (65) feet above ground level shall be permitted anywhere on the Gas Station Parcel.

## ARTICLE 22

### DEFAULT

22.1 Any of the following occurrences or acts shall constitute an "Event of Default" under this Lease: (a) if Tenant shall (i) fail to make any payment of Fixed Rent be paid by Tenant and such failure shall continue for 5 days after Landlord shall have given Tenant notice specifying such failure or (ii) fail to observe or perform any of Tenant's other covenants, agreements or obligations hereunder and such failure shall continue for 20 days after Landlord shall have given to Tenant notice specifying such failure or, if such default cannot be cured by the payment of money and cannot with due diligence be cured within such 20 day period owing to force majeure, if Tenant shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with diligence and continuity, or (b) if Tenant shall file a petition for bankruptcy or for reorganization or for an arrangement pursuant to any present or future federal bankruptcy act or under any similar federal or state law or shall be adjudicated bankrupt or insolvent or shall make an assignment for the benefit of its 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 Tenant as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged within 30 days after the filing thereof, or (c) if a receiver, trustee or liquidator of Tenant or of all or substantially all of the assets of Tenant or of Tenant's interest in the Demised Premises or part thereof shall be appointed in any proceeding brought by Tenant, or if any such receiver, trustee or liquidator shall be appointed in any proceeding brought against Tenant and shall not be discharged within 30 days after such appointment or if Tenant shall consent to or acquiesce in such appointment, or (d) if the estate or interest of Tenant in the Demised Premises or part thereof shall be levied upon or attached in any proceeding and such process shall not be vacated or discharged within 30 days after such levy or attachment, or (e) if the Leased Premises shall be abandoned by Tenant for a period of 30 consecutive days.

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22.2 This Lease and the Term and estate hereby granted are subject to the limitation that whenever an Event of Default shall have happened and be continuing, Landlord shall have the right at its election then or thereafter while any such Event of Default shall continue and notwithstanding the fact that Landlord may have some other remedy hereunder or at law or in equity, to give Tenant notice of Landlord's intention to terminate the Term of this Lease on a date specified in such notice (which shall be not less than 10 days after the giving of such notice if such Event of Default shall have occurred under paragraph 22.1 (a) (i) or not less than 20 days after the giving of such notice if such Event of Default shall have occurred under paragraph 22.1 (a) (ii)), and upon the date so specified, the Term of this Lease and the estate hereby granted shall expire and terminate with the same force and effect as if the date specified in such notice were the date hereinbefore fixed for the expiration of the term of this Lease, and all rights of Tenant hereunder shall expire and terminate (but Tenant shall remain liable as hereinafter provided), unless before such date, if such date is after the date of such notice, (i) all arrears in Fixed 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.

22.3 In the event of any termination of the Term of this Lease as provided in this Article 22 or as permitted by law, Tenant shall quit and surrender the Demised Premises to Landlord, and Landlord may without further notice enter upon, re-enter upon, re-possess and repossess the same by summary proceedings, ejectment or otherwise, and again have, repossess and enjoy the same as if this Lease had not been made, and in any such event neither Tenant nor any person claiming through or under Tenant by virtue of any law or an order of any court shall be entitled to possession or to remain in possession of the Demised Premises but shall forthwith quit and surrender the Demised Premises, and Landlord at its option shall forthwith, notwithstanding any other provision of this Lease, be entitled to recover from Tenant (in lieu of all other claims for damages on account of such termination) as and for liquidated damages an amount equal to the excess of all Fixed Rent reserved hereunder for the unexpired portion of the then current Term of this Lease discounted at the rate of 6% per annum from the dates such rents would have become due under this Lease to the date of such termination, over the fair rental value of the Demised Premises at the time of termination for such unexpired portion. The discount rate to be used in determining such fair rental value shall be 6% per annum. Nothing herein contained shall limit or prejudice the right of Landlord, in any bankruptcy or reorganization or insolvency proceedings, to prove for and obtain as liquidated damages by reason of such termination an amount equal to the maximum allowed by any bankruptcy or reorganization or insolvency proceedings, or to prove for and obtain as liquidated damages by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law whether such amount shall be greater or less than the excess referred to above.

22.4 If Landlord shall re-enter and obtain possession of the Demised Premises following an Event of Default, Landlord shall have the right, without notice, to repair or alter the Demised Premises in such manner as to Landlord may seem necessary or advisable so as to put the Demised Premises in good order and to make the same rentable, and shall have the right, at Landlord's option, to relet the Demised Premises or a part thereof for such term or terms, and at such rental or rentals and upon such terms and conditions as Landlord may deem advisable, and Tenant agrees to pay to Landlord on demand all reasonable expenses incurred by Landlord in obtaining possession, and in altering, repairing and putting the Demised Premises in good order and condition, and in reletting the same, including reasonable fees and expenses of attorneys and architects, and all other reasonable expenses or commissions. Tenant further agrees to pay to Landlord following the date of such re-entry, to and including the date provided in this Lease for the expiration of the Term of this Lease in effect immediately prior to such re-entry, the sums of money which would have been payable by Tenant as Fixed Rent and additional rent hereunder as and when the same would

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have been due if Landlord had not re-entered and resumed possession of the Demised Premises, deducting only the net amount of rent (including, without limitation, fixed rent and additional rent), if any, which Landlord shall actually receive in the meantime from and by any reletting of the Demised Premises, and Tenant hereby agrees to remain liable for all sums otherwise payable by Tenant under this Lease as well as for any deficiency aforesaid. Landlord shall have the right from time to time to begin and maintain successive actions or other legal proceedings against Tenant for the recovery of such deficiency, expenses or damages or for a sum equal to any installations of Fixed Rent or additional rent and other sums payable hereunder, and to recover the same upon the liability of Tenant herein provided, which liability it is expressly covenanted shall survive the issuance of any action to secure possession of the Demised Premises. Nothing herein contained shall be deemed to require Landlord to wait to begin such action or other legal proceedings until the date when this Lease would have expired by limitation had there been no such event of default.

22.5 If Tenant at any time fails to pay any taxes, assessments or liens, or to make any payment or perform any act required by this Lease to be made or performed by it, Landlord, without waiving or releasing Tenant from any obligation or default under this Lease, 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 Tenant. All sums so paid by Landlord and all costs and expenses so incurred together with 5% of the sum total thereof representing Landlord's overhead cost shall accrue interest at the rate of 10% per annum from the date of payment or incurring thereof by Landlord but not in excess of the maximum legal rate payable in the State of Illinois. Such sums and any accumulated interest shall constitute additional rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord upon demand.

ARTICLE 23INSPECTION

23.1 Tenant shall permit Landlord, its agents, employees, contractors and designees to enter all parts of the Demised Premises during normal business hours to inspect the same or to enforce or carry out any of the provisions of this Lease.

ARTICLE 24FORCE MAJEURE

24.1 The time within which either of the parties hereto shall be required to perform any act or acts under this Lease, except for payment of money, shall be extended to the extent that the performance of such act or acts shall be delayed by the following causes: acts of God, fire or other casualty, accident, riot, war, labor disputes, delays or restrictions by governmental bodies, inability to obtain or use necessary services or materials, or any cause beyond the reasonable control of such party (any such cause being called "Force Majeure" in this Lease), provided that lack of or inability to obtain financing shall not be deemed to be Force Majeure and the party entitled to an extension hereunder shall give prompt notice to the other party of the occurrence causing such delay. It is understood, however, that insofar as Articles 17 and 18 of this Lease are concerned, time is of the essence and the provisions of this Article 24 shall not apply.

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## ARTICLE 25

### NO RECORDING

25.1 This Lease shall not be recorded without the express written consent of Landlord; provided, however, that the parties hereto are simultaneously herewith executing a Memorandum of this Lease for recording purposes.

## ARTICLE 26

### CAPTIONS

26.1 The captions and headings herein are for convenience and reference only.

## ARTICLE 27

### APPLICABLE LAW, SEVERABILITY

27.1 This Lease shall be construed under the laws of the State of Illinois. If any provision of this Lease, or portion thereof, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

## ARTICLE 28

### NON-WAIVER

28.1 No reference to any specific right or remedy shall preclude Landlord from exercising any other right or from having any other remedy or from maintaining any action to which it may otherwise be entitled either at law or in equity.

28.2 Landlord's waiver of or failure to insist upon the strict performance of any term, covenant or condition of this Lease or Landlord's failure to exercise any option, right or remedy herein contained shall not be a waiver or relinquishment for the future of such term, covenant, condition, option, right or remedy, but the same shall remain in full force and effect.

## ARTICLE 29

### NO PARTNERSHIP

29.1 Any intention to create a joint venture, partnership or agency relation between Landlord and Tenant is hereby expressly disclaimed.

## ARTICLE 30

### SUCCESSORS

30.1 This Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon Landlord, its successors and assigns, and shall be binding upon Tenant, its successors and assigns, and shall inure to the benefit of Tenant and only such assigns of Tenant to whom this Lease has been assigned by Tenant with the written consent of Landlord.



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## ARTICLE 31

### LIABILITY

31.1 If two or more individuals, corporations, partnerships or other business associations shall sign this Lease as Tenant, the liability of each such individual, corporation, partnership or other business association to pay rent and perform all other obligations hereunder shall be deemed to be joint and several. In like manner, if the Tenant named in this Lease shall be a partnership or other business association, the members of which are, by virtue of statute or general law, subject to personal liability, the liability of each such member shall be deemed to be joint and several.

## ARTICLE 32

### AUTHORITY

32.1 Tenant warrants and represents to Landlord that Tenant's execution of this Lease has been properly authorized.

32.2 Landlord warrants and represents to Tenant that Landlord's execution of this Lease has been properly authorized.

## ARTICLE 33

### COPIES

33.1 This Lease is executed in 6 copies, any of which may be considered and used as an original copy. Three of said copies are to be retained by Landlord; three of said copies are to be retained by Tenant.

## ARTICLE 34

### ESTOPPEL

34.1 Tenant agrees that at any time and from time to time at reasonable intervals, within 10 days after written request by Landlord, Tenant will execute, acknowledge and deliver to Landlord or any party designated by Landlord, a writing ratifying this Lease and certifying: (a) that Tenant has entered into occupancy of the Demised Premises and the date of such occupancy; (b) that this Lease is in full force and effect, and has not been assigned, modified, supplemented or amended in any way (or if there has been any assignment, modification, supplement or amendment, identifying the same); (c) the Commencement Date, the Full Commencement Date, the date of expiration of the Term; (d) that all covenants terms and conditions under this Lease to be performed by Landlord have been performed or satisfied (or if not, the nature of and the extent to which such covenants, terms and conditions remain unperformed or unsatisfied); (e) that there are no defenses or offsets against the enforcement of this Lease by Landlord (or if there are, specifying such defense or offset); (f) that no Fixed Rent or other rental has been paid in advance; (g) the date to which Fixed Rent and all other rentals have been paid under this Lease; and (h) that no security has been deposited with Landlord.

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## ARTICLE 35

### NOTICES

35.1 Any notice demand, request or other communication required or permitted to be given or served under this Lease or applicable law shall be in writing and shall be sent postage paid by registered or certified mail, return receipt requested, (a) as to Landlord, to Landlord's address shown on the first page of this Lease, marked to the attention of Landlord's Real Estate Department, with a copy to J. C. Penney Company, Inc., 5105 Tollview Drive, Boling Meadows, Illinois 60008 Attention: Real Estate Department and (b) as to tenant, to Tenant's address shown the first page of this lease; provided, however, either party may give telegraphic notice of the exercise of an option or right hereunder or of the need for emergency repairs, provided that contemporaneously a copy of said telegraphic notice is also mailed as herein provided. All such communications mailed or transmitted by wire in accordance with the foregoing provisions shall be deemed to have been given as of the date of such mailing or transmittal.

35.2 Either party may by written notice, (a) designate a different address to which notices may be sent, and (b) designate not more than 3 additional parties to whom copies of all notices must be sent.

## ARTICLE 36

### BROKERS

36.1 Tenant represents and warrants that it dealt with no broker or finder, licensed or otherwise, in connection with this lease. Tenant agrees that if any claim be made for a brokerage commission or fee by any broker, finder or other person because of, or in connection with, any act of Tenant, then Tenant shall indemnify, pay, and hold Landlord free and harmless from any and all liabilities, demands, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) in connection therewith and Tenant shall defend any action against Landlord in connection therewith with counsel satisfactory to Landlord.

36.2 Landlord represents and warrants that it dealt with no broker or finder, licensed or otherwise, in connection with this lease. Landlord agrees that if any claim be made for a brokerage commission or fee by any broker, finder or other person because of, or in connection with, any act of Landlord, then Landlord shall indemnify, pay, and hold Tenant free and harmless from any and all liabilities, demands, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) in connection therewith and Landlord shall defend any action against Tenant in connection therewith with counsel satisfactory to Tenant.

## ARTICLE 37

### MISCELLANEOUS

37.1 This Lease contains the entire agreement between the parties. The covenants, terms and conditions of this Lease may be changed, modified or discharged only by an instrument in writing signed by Landlord and Tenant.

37.2 The use herein of (i) the singular number shall be deemed to include the plural and (ii) the masculine gender shall be deemed to include the feminine or neuter, and the neuter gender to include the masculine or feminine.

37.3 This Lease shall not be binding on Landlord until a fully executed copy thereof shall have been delivered by Landlord to Tenant or to Tenant's attorney, agent or representative.

37.4 Any consent required of Landlord in any provision of this Lease may be withheld by Landlord in its sole discretion unless the provision requiring such consent specifically states that Landlord shall not withhold such consent unreasonably.

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37.5 Wherever in this Lease anything is to be done or performed by Tenant, it shall be done or performed at the sole cost and expense of Tenant.

37.6 Except as expressly stated in this Lease, Landlord has made no representations or warranties to Tenant.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed as of the day and year first above written.

"Landlord"

J. C. PENNEY PROPERTIES, INC.

Attest:

*Cynthia [Signature]*  
Assistant Secretary

By *[Signature]*  
Vice President

"Tenant"

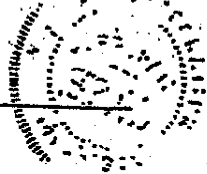


K MART CORPORATION

ATTEST:

*[Signature]*  
Assistant Secretary

By *[Signature]*  
Vice President



Property of Cook County Clerk's Office

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### RENT RIDER

A. Tenant shall pay Landlord as rent for the Demised Premises in equal monthly installments on or before the tenth day of the month for which payable:

Effective for the period: Commencing on Commencement Date	Ending on Full Commencement Date	Annual Rent at the rate of (per annum) "Fixed Rent"
Full Commencement Date	May 31, 1984	[REDACTED]
June 1, 1984	May 31, 1994	[REDACTED]
June 1, 1994	May 31, 2004	[REDACTED]
June 1, 2004 (1st Extended Term)	May 31, 2009	[REDACTED]
June 1, 2009 (2nd Extended Term)	May 31, 2014	[REDACTED]
June 1, 2014 (3rd Extended Term)	May 31, 2019	[REDACTED]
June 1, 2019 (4th Extended Term)	May 31, 2024	[REDACTED]

B. If the Term commences on a day other than the first day of the month, Tenant shall pay on such commencement date a pro rata share of a full monthly installment of Fixed Rent, and thereafter, monthly installments of the Fixed Rent shall be payable on or before the tenth day of each calendar month.

C. Any installment of Fixed Rent or payment of additional rent which is not paid on the date on which it is due shall bear interest from the due date at the rate of 10% per annum but not in excess of the maximum legal rate that is permitted in the State of Illinois.

D. Until he receives other instructions in writing from Landlord, Tenant shall pay all Fixed Rent and additional rent due under this Lease by check to the order of J. C. Penney Properties, Inc., mailed to J. C. Penney Properties, Inc., Attention: Fixed Asset Accounting, c/o Robert Barrus, Salt Lake City Accounting Center, P. O. Box 400, Salt Lake City, Utah 84110.

\*\*\*\*\*

Attached to and forming part of sublease dated as of November 1, 1979, by and between J. C. Penney Properties, Inc., as Landlord, and K MART CORPORATION, as Tenant.

Initialed for identification for Landlord  
By [Signature]

Initialed for identification for Tenant  
By [Signature]

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EXHIBIT A

DESCRIPTION OF THE DEMISED LAND

Lot 1 in the Pumpkin Subdivision, being a Subdivision of part of the East 1/2 of the Southeast 1/4 of Section 16, Township 37 North, Range 13 East of the Third Principal Meridian, excepting that part of said Lot 1, lying Southeasterly and Easterly of the following described Lines; beginning at the Southwest corner of Lot 2 in the aforesaid Pumpkin Subdivision; thence Southwesterly 147.164 feet along the Southwesterly extension of the Northwesterly line of said Lot 2 to the point of intersection with a line drawn perpendicularly to the South Line of said Lot 1 at a point on said South Line 781.55 feet East of the Southwest corner of said Lot 1; thence South along said perpendicular line 188.857 feet to the South line of said Lot 1, also excepting from said Lot 1 a parcel of land described as follows; commencing at the Northeast corner of said Lot 2, being also a corner in said Lot 1; thence Northerly 33.00 feet along the East line of said Lot 1; thence Easterly 5.00 feet along a jog in said Lot 1 to the most Easterly line of said Lot 1; thence Northerly 30.65 feet along said Easterly Line to the point of beginning; thence Westerly 191.65 feet along a line drawn parallel with the North line of said Lot 2; thence Northerly 201.75 feet along a line drawn parallel with the most Easterly line of said Lot 1; thence Easterly 191.65 feet along a line parallel with the North line of said Lot 2 to the most Easterly line of said Lot 1; thence Southerly 201.75 feet along said Easterly line to the point of beginning, all in Cook County, Illinois.

Property Clerk's Office

\*\*\*\*\*

Attached to and forming part of sublease dated as of November 1 1979, by and between J. C. Penney Properties, Inc., as Landlord, and K MART CORPORATION, as Tenant.

Initialed for identification for Landlord

By [Signature]

Initialed for identification for Tenant

By [Signature]

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STATE OF NEW YORK  
COUNTY OF NEW YORK

SS.:

On this the 15<sup>th</sup> day of October, 1979, before me, a Notary Public duly authorized in and for the said County in the State aforesaid to take acknowledgments, personally appeared 5 Buckthorne Lane  
A. H. AMON, JR., residing at Greenwich, Connecticut 06830, to me known and known to me to be a Vice President of J. C. Penney Properties, Inc., one of the corporations described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of said corporation by subscribing the name of said corporation by himself as such officer and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:

Mary Theresa Simon  
Notary Public

MARY THERESA SIMON  
NOTARY PUBLIC, State of New York  
No. 31-4625045  
Qualified in New York County  
Commission Expires March 30, 1980

STATE OF MICHIGAN  
COUNTY OF OAKLAND

SS.:

On this the 1<sup>st</sup> day of Nov., 1979, before me, a Notary Public duly authorized in and for the said County in the State aforesaid to take acknowledgments, personally appeared R. G. Davis residing at Hamington Hills, Mich. to me known and known to me to be Vice President of K MART CORPORATION, one of the corporations described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of said corporation by subscribing the name of such corporation by himself as such officer and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:

Mary E. Barker  
Notary Public

MARY E. BARKER  
Notary Public, Oakland County Mich.  
My Commission Expires May 4, 1981

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EXHIBIT C

DESCRIPTION OF THE PRIMARY LEASE

1. Lease and Agreement dated May 1, 1974 between Pennlawn Associates, as Lessor, and J. C. Penney Properties, Inc., as Lessee.
2. Memo of Lease dated May 1, 1974 and recorded May 8, 1974 as Document 22709543 and registered as LR2751512 made by Pennlawn Associates to J. C. Penney Properties, Inc.

Property of Cook County Clerk's Office

NOTE: Pennlawn Associates interest in Primary Lease was assigned to Harris Trust and Savings Bank (5/8/74 Document 22709545 and LR 2751514); then assigned to United California Bank (5/9/74 Document 22712622 and LR 2751894); then assigned to State of California, State Teachers' Retirement System (5/9/74 Document 22712624 and LR 2751896).

\*\*\*\*\*

Attached to and forming part of sublease dated as of November 1 1979, by and between J. C. Penney Properties, Inc., as Landlord, and K MART CORPORATION, as Tenant.

Initialed for identification for Landlord  
By TS

Initialed for identification for Tenant  
By RVP

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EXHIBIT D

DESCRIPTION OF THE LANDLORD'S WORK

Landlord has heretofore caused construction of landlord's Building and of other improvements on the Demised Land. Tenant accepts the Demised Premises in an "as-built" and "as-is" condition. In addition to the improvements delivered with the Demised Premises, Landlord will do the following work prior to the Full Commencement Date:

1. Disconnect the electric service on the Gas Station Parcel from the electric service on the Demised Land.
2. Remove Landlord's signs from the Landlord's Building and from the balance of the Demised Land.

Property of Cook County Clerk's Office

\*\*\*\*\*

Attached to and forming part of sublease dated as of November 1 1979, by and between J. C. Penney Properties, Inc., as Landlord, and K MART CORPORATION, as Tenant.

Initialed for identification for Landlord  
By [Signature]

Initialed for identification for Tenant  
By [Signature]

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## EXHIBIT E

### REQUIREMENTS CONCERNING TENANT'S WORK

All work (including without limitation, Tenant's Work) not specifically designated as Landlord's Work in Exhibit D, which is necessary to complete the Demised Premises in accordance with Tenant's plans and specifications as approved by Landlord and which is necessary for the Demised Premises to be ready to open for business with the public, shall be done by Tenant at Tenant's sole cost and expense. The Demised Premises and all work done therein by Tenant shall be designed and completed in accordance with the provisions of paragraph 7.3 of this Lease, with the Insurance Requirements and with the Legal Requirements.

The following additional requirements also apply:

1. Utilities Tenant shall accept the Demised Premises upon delivery by Landlord with such gas, electricity, water and sewer services as exist at that time. All modifications to such facilities must be shown on Tenant's plans and specifications, shall be subject to Landlord's approval and will be made at Tenant's expense. The installation by Tenant of all electrical facilities shall conform to the National Electric Code, and meet the requirements of the Landlord's fire underwriter and local governmental authorities. All materials used in modifying the existing electrical facilities shall be new and carry UL labels, including fixtures. Any transformer necessary to reduce the voltage supplied to levels acceptable for Tenant shall be provided by Tenant, at Tenant's expense.
2. Fire Protection. A sprinkler system is presently in place within the Demised Premises connected to mains provided by Landlord and Tenant shall accept same in its "as-is" condition, Landlord making no representations as to its operability. All modifications to the existing system shall be shown on Tenant's plans and specifications and will be at the expense of Tenant. Landlord (or a representative designated by Landlord) shall have the right to inspect the system and to reject it if it fails to meet underwriter or fire ordinance requirements. Any drainage of the system that may be required is to be made at Tenant's sole cost and expense. Tenant shall carry and maintain at its sole cost and expense the approved fire extinguishers required by governmental authorities.
3. Mechanical Systems All modifications to the existing heating, ventilating and air-conditioning system servicing Landlord's Building shall be shown on Tenant's plans and specifications.
4. Signs Shall comply with the requirements of governmental authorities applicable thereto.
5. Roof Penetrations Tenant shall submit for approval of Landlord in the plans and specifications, drawings showing all roof penetrations for vents and equipment.

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6. Miscellaneous and General Requirements.

- (a) Landlord's Consents Interpreted. Any approval or consent by Landlord of any or all of Tenant's criteria, systems, plans or drawings shall neither constitute an assumption of responsibility by Landlord for an aspect of such criteria, systems, plans or drawings including, but not limited to, their accuracy or efficiency nor obligate Landlord in any manner with respect to Tenant's Work and Tenant shall be solely responsible for any deficiency in any design or construction of all portions of Tenant's Work.
- (b) Permits and Fees. Tenant shall obtain and pay for all necessary permits and shall pay all other fees required by public authorities or utility companies with respect to Tenant's Work.
- (c) Cleanup. Tenant shall maintain the Demised Premises in a clean and orderly condition during construction. Tenant shall promptly remove all unused construction materials, equipment, shipping containers, packaging, debris and waste from the building site. Tenant shall contain all construction materials, equipment, fixtures, merchandise, shipping containers and debris within the Demised Premises. Trash storage within the Demised Premises shall be confined to covered metal containers.

7. Occupancy Permit. Tenant shall secure an occupancy permit (if any is required) from that authority which has jurisdiction over the Demised Premises.

\* \* \* \* \*

Attached to and forming part of sublease dated as of November 1, 1979 by and between J. C. Penney Properties, Inc., as Landlord, and K MART CORPORATION, as Tenant

Initialed for identification for Landlord

By [Signature]

Initialed for identification for Tenant

By [Signature]

# UNOFFICIAL COPY

## EXHIBIT F

### DESCRIPTION OF THE PERMITTED EXCEPTIONS

The "Permitted Exceptions" shall mean the Agreements referred to in Part III of Exhibit A of the Primary Lease together with the Permitted Exceptions referred to in Part IV of Exhibit A of the Primary Lease together with the following additional items:

1. Any state of facts which may be shown on survey prepared by National Survey Service, Inc. and last revised March 30, 1979 (N-103534) which is attached to this Lease as Exhibit B.
2. Rights of the Public, the State of Illinois, and the Village of Oak Lawn in and to that part of the land falling in Stony Creek and to the free and uninterrupted flow of the waters of said creek.
3. Storm sewers as disclosed by Survey No. 69-12-23 utility dated June 30, 1970 by Hilltop Surveyors, as follows: (A) 24 inch sewer in the East half of vacated Lamon Avenue North of the center line of vacated 110th Street (B) 15 inch sewer in the East half of vacated LaCrosse Avenue North of the center line of vacated 110th Street.
4. Grant of easement contained in an Agreement dated December 6, 1976 and recorded December 30, 1976 and registered as LR2914133 made by J. C. Penney Properties, Inc., to La Salle National Bank for ingress and egress over a parcel of land described as follows:

A STRIP OF LAND IN LOT 1 IN THE PUMPKIN SUBDIVISION BEING A SUBDIVISION OF PART OF THE EAST HALF OF THE SOUTH WEST QUARTER OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID STRIP OF LAND BEING DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTH EAST CORNER OF LOT 2 IN SAID SUBDIVISION; THENCE NORTH, ALONG THE EASTERLY LINE OF THE AFORESAID LOT 1, A DISTANCE OF 53.00 FEET TO A POINT OF DEFLECTION IN SAID EASTERLY LINE; THENCE EAST, ALONG SAID LOT LINE, 5.00 FEET TO THE MOST EASTERLY LINE OF SAID LOT 1; THENCE NORTH, ALONG THE MOST EASTERLY LINE THEREOF, 17.00 FEET TO A LINE DRAWN 50.00 FEET (MEASURED PERPENDICULARLY) NORTH OF AND PARALLEL WITH THE NORTH LINE OF THE AFORESAID LOT 2; THENCE WEST, ALONG SAID PARALLEL LINE, 223.687 FEET TO THE NORTH EASTERLY EXTENSION OF SAID LINE DRAWN 30.00 FEET (MEASURED PERPENDICULARLY) NORTH WESTERLY OF AND PARALLEL WITH THE NORTH WESTERLY LINE OF THE AFORESAID LOT 2; THENCE SOUTH WESTERLY ALONG THE LAST DESCRIBED PARALLEL LINE AND THE NORTH EASTERLY EXTENSION THEREOF 378.351 FEET TO THE WESTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 2; THENCE EAST, ALONG SAID WESTERLY

\*\*\*\*\*

Attached to and forming part of sublease dated as of November 1 1979, by and between J. C. Penney Properties, Inc., as Landlord, and K MART CORPORATION, as Tenant.

Initialed for identification for Landlord  
By [Signature]

Initialed for identification for Tenant  
By [Signature]

# UNOFFICIAL COPY

EXTENSION 34.347 FEET TO THE SOUTH WEST CORNER THEREOF; THENCE NORTH EASTERLY, ALONG THE NORTH WESTERLY LINE OF SAID LOT 2, A DISTANCE OF 319.439 FEET TO THE NORTH WEST CORNER THEREOF; THENCE EAST, ALONG THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 214.60 FEET TO THE PLACE OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

- 5. Easement contained in deed recorded July 7, 1976 as Document 23548580 and registered as LR2879980 for ingress and egress over the following described property:

A STRIP OF LAND IN LOT 1 IN THE PUMPKIN SUBDIVISION, BEING A SUBDIVISION OF PART OF THE EAST HALF OF THE SOUTH EAST QUARTER OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID STRIP OF LAND BEING DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTH WEST CORNER OF LOT 2 IN SAID SUBDIVISION; THENCE NORTH WESTERLY, ALONG THE SOUTH WESTERLY EXTENSION OF THE NORTH WESTERLY LINE OF SAID LOT 2, A DISTANCE OF 147.164 FEET TO A LINE DRAWN PERPENDICULARLY TO THE SOUTH LINE OF THE AFORESAID LOT 1, THROUGH A POINT ON SAID SOUTH LINE, SAID POINT BEING 280.00 FEET (AS MEASURED ALONG SAID SOUTH LINE) WEST OF THE SOUTH EAST CORNER OF SAID LOT 1; THENCE SOUTH, ALONG SAID PERPENDICULAR LINE, 188.857 FEET TO THE SOUTH LINE OF SAID LOT 1; THENCE WEST, ALONG SAID SOUTH LINE, BEING ALSO THE NORTH LINE OF WEST 111TH STREET, 50.00 FEET; THENCE NORTH, ALONG A LINE DRAWN PERPENDICULARLY TO THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 165.378 FEET TO THE SOUTH WESTERLY EXTENSION OF A LINE DRAWN 30.00 FEET (MEASURED PERPENDICULARLY) NORTH WESTERLY OF AND PARALLEL WITH THE NORTH WESTERLY LINE OF THE AFORESAID LOT 2; THENCE NORTH EASTERLY, ALONG SAID PARALLEL LINE AND THE SOUTH WESTERLY EXTENSION THEREOF, 174.853 FEET TO THE WESTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 2; THENCE EAST, ALONG SAID WESTERLY EXTENSION, 35.347 FEET TO THE PLACE OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

- 6. Devised Land will be subject to flood maps as shown by report appended to the Plot of Pumpkin subdivision recorded February 22, 1974 as Document 22635081 and filed February 22, 1974 as Document LR 2740354.
- 7. Grant of Easement dated September 20, 1974 from J. C. Penney Properties, Inc. to Village of Oak Lawn (for installation of traffic signals).
- 8. Taxes for the year 1979 and subsequent years which are not yet payable.

\*\*\*\*\*

Attached to and forming part of sublease dated as of November 1 1979, by and between J. C. Penney Properties, Inc., as Landlord, and K MART CORPORATION, as Tenant.

Initialed for identification for Landlord  
 By     

Initialed for identification for Tenant  
 By

# UNOFFICIAL COPY

EXHIBIT G

DESCRIPTION OF GAS STATION PARCEL

That Part of Lot 1 in the Pumpkin Subdivision, Being a Sub-division of Part of the East 1/4 of the Southeast 1/4 of Section 16, Township 37 North, Range 13 East of the Third Principal Meridian described as follows: Commencing at the Northeast Corner of Lot 2 in the aforesaid Pumpkin Subdivision, being also a corner in said Lot 1; thence Northerly 33.00 feet along the East line of said Lot 1; thence Easterly 5.00 feet along a jog in said Lot 1 to the most Easterly line of said Lot 1; thence Northerly 30.65 feet along said Easterly Line to the point of beginning; thence Westerly 191.65 feet along a line drawn parallel with the North line of said Lot 2; thence Northerly 201.75 feet along a line drawn parallel with the most Easterly line of said Lot 1; thence Easterly 191.65 feet along a line parallel with the North line of said Lot 2 to the most Easterly line of said Lot 1; thence Southerly 201.75 feet along said Easterly line to the point of beginning, all in Cook County, Illinois.

Properly Filed in Cook County Clerk's Office

\*\*\*\*\*  
 Attached to and forming part of sublease dated as of November 1 1979, by and between J. C. Penney Properties, Inc., as Landlord, and K MART CORPORATION, as tenant.

Initialed for identification for Landlord  
 By [Signature]

Initialed for identification for Tenant  
 By [Signature]

KMOAK 000139  
 CONFIDENTIAL

# UNOFFICIAL COPY

# JCPenney

November 1, 1979

K MART CORPORATION  
3100 West Big Beaver Road  
Troy, Michigan 48084

Re: Store #5072 - Oak Lawn, Illinois  
Your Store #3515

Gentlemen:

Reference to Sublease dated as of even date herewith between J. C. Penney Properties, Inc., as Landlord, and K Mart Corporation, as Tenant (the "Sublease").

This is to confirm that:

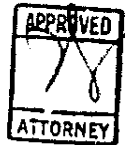
1. The undersigned Company will indemnify and hold you harmless from and of any penalties, damages and/or liabilities which may arise by reason of our failure to obtain a subdivision of Lot 1 in the Pumpkin Subdivision to reflect the Demised Land (as defined in the Sublease) as a separate parcel of land; and
2. When and if a subdivision is accomplished, it is our intent to rerecord the Memorandum of the Sublease in order to reflect the subdivision.

Please indicate your consent to item #2, above.

Very truly yours,

J. C. PENNEY PROPERTIES, INC.

BY: [Signature]  
Vice President



AHA/NdG/djp

Item #2 is hereby consented to as of the date first above written.

K MART CORPORATION

BY: [Signature]

**UNOFFICIAL COPY**

J. C. PENNEY PROPERTIES, INC.  
 5105 Tollview Drive  
 Rolling Meadows, Illinois 60008

November 1, 1979

K mart Corporation  
 3100 West Big Beaver Road  
 Troy, Michigan 48084

Re: Store #5072 - Oaklawn, Illinois  
 (Your Store #3515)

Gentlemen:

This letter has reference to Sublease dated as of even date herewith pursuant to which we are leasing to you the store building and the parking area utilized in conjunction therewith, in the Village of Oak Lawn, Cook County, Illinois, all as more particularly described in said Sublease.

A. The title commitment issued by Chicago Title Insurance Company dated October 4, 1979 (Number 66-89-342), shows in items #3 and #4 of Schedule B that a portion of the Real Estate Taxes for the year 1976 have not yet been paid. We hereby assure you that the undersigned Company will indemnify and hold you harmless from and of any penalties, damages and/or liabilities which may arise by reason of our failure to pay such 1976 Real Estate Taxes. It is our understanding that a Certificate of Error has been filed and the matter will not be finally adjudicated until late 1980.

B. This is to confirm our understanding that the terms (as used in the Sublease):

"Commencement Date" - shall mean the date of November 1, 1979, it being understood that the Sublease commenced as of 12:01 a.m. on said date.

"Full Commencement Date" - shall mean the date of January 1, 1980.

## UNOFFICIAL COPY

K mart Corporation  
November 1, 1979  
Page Two -

C. The undersigned will pay the "Taxes" (as defined in Article 6 of the Sublease) for the year 1979 which are payable in 1980. This is in accordance with Section 6.6 of the Sublease.

D. In consideration of the sum of \$31,333.00 which shall be handled as a credit against the rent due for the month of January, 1980, you agree to and hereby do accept the Demised Premises "as is" as of the date of this letter (which is also the Commencement Date of the term of the Sublease).

E. You hereby agree to wire transfer today the sum of \$300,000.00 in Fed Funds payable to J. C. Penney Company, Inc. to account #006-035-280 in the Chemical Bank of New York in consideration of delivery to you of the Bill of Sale dated as of even date herewith for the fixtures and equipment presently in the captioned store.

Very truly yours,

J. C. PENNEY PROPERTIES, INC.

By: *W. J. DeMaay*

Regional Real Estate Attorney

Items B, D and E of this letter are hereby consented to as of the date first above written.

K MART CORPORATION

By: *R. E. Davis*



**UNOFFICIAL COPY**

RECEIVED

JUN 02 2003

REAL ESTATE DEPT.



Kmart Corporation  
Rosewood Center  
3100 West Big Beaver Road  
Troy, MI 48064-1-63

May 28, 2003

**CERTIFIED MAIL - RRR**  
#7002 0860 0002 1568 1378

**FEDERAL EXPRESS OVERNIGHT**

J. C. Penney Properties, Inc.  
Attn: Real Estate Counsel  
Renee J. Magnant  
P. O. Box 10001  
Dallas, TX 75301-2105

Re: Lease dated November 1, 1979 for  
the premises located in Oak Lawn, IL  
and known as Kmart #3515

Dear Landlord:

The undersigned hereby elects to extend the subject Lease for an additional term of five (5) years, commencing June 1, 2004, to and including May 31, 2009, upon the terms, conditions, and rental as set forth in said Lease, as amended.

Sincerely,

KMART CORPORATION

By *Michelle H. Gluck*  
Michelle H. Gluck  
Vice President Real Estate, Construction  
& Assistant Secretary

MG/cjl

- cc: F. Duzzie
- D. Haluska
- D. Holtrey
- C. Houck
- D. Hurley
- C. Lapensee
- M. Thomas
- Corres. File
- Lease File

J. C. Penney Company, Inc.  
P. O. Box 27704  
Salt Lake City, UT 84127-0704  
**CERTIFIED MAIL - RRR**  
#7002 0860 0002 1568 0517

Property of Cook County Clerk's Office

**UNOFFICIAL COPY**

SEARS REAL ESTATE

NO. 569 P. 2/2

**SEARS HOLDINGS**

3333 Beverly Road  
Hoffman Estates, IL 60179

May 19, 2008

**CERTIFIED MAIL /  
RETURN RECEIPT REQUESTED  
#7008 0810 0002 7421 4792**

J C Penney Properties, Inc.  
501 Legacy Drive (MS-1104)  
Plano, TX 75024-3698  
Attn: Associate General Counsel - Real Estate

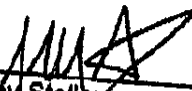
Re: Lease dated November 1, 1979, as amended,  
for the premises located at 11000 S. Cicero Avenue,  
Oak Lawn, IL and known as Kmart #3515

Dear Landlord:

The undersigned hereby elects to extend the subject Lease for an additional term of five (5) years, commencing June 1, 2009, to and including May 31, 2014, upon the terms, conditions, and rental as set forth in said Lease, as amended.

Sincerely,

KMART STORES OF ILLINOIS, LLC  
BY: KMART CORPORATION

By   
Jeffrey Stollenwerck  
Senior Vice President of Real Estate

JS/al

cc: J. Catanese  
Lease File

PROPERTY OF COOK COUNTY Clerk's Office

**UNOFFICIAL COPY**

WHEN RECORDED MAIL TO:

*Prepared By*  
 R. J. Magnant  
 J. C. Penney Properties, Inc.  
 6501 Legacy Drive (MS 1104)  
 Plano, TX 75024-3698

Doc#: 1126618069 Fee: \$58.00  
 Eugene "Gene" Moore RHSP Fee: \$10.00  
 Cook County Recorder of Deeds  
 Date: 09/23/2011 03:31 PM Pg: 1 of 11

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**MEMORANDUM OF RECOGNITION AND ATTORNMENT AGREEMENT**

THIS MEMORANDUM OF RECOGNITION AND ATTORNMENT AGREEMENT, dated as of August 15, 2011, by and between J.C. PENNEY PROPERTIES, INC., a Delaware corporation, having an address at J. C. Penney Properties, Inc., Attn.: Real Estate Counsel, 6501 Legacy Drive (MS 1104), Plano, TX 75024-3698 ("Properties") and KMART CORPORATION ("Kmart"), having an address of c/o Sears Holdings, 3333 Beverly Road, Hoffman Estates, Illinois 60179. u

**WITNESSETH:**

WHEREAS, Properties and Kmart have entered into that certain Recognition and Attornment Agreement attached hereto as Exhibit A and made part hereof respecting that certain Sublease between Properties, as Landlord, and Kmart, as Tenant, dated as of November 1, 1979, located on the real estate described in Exhibit B attached hereto and made part hereof, and identified as Permanent Index No. 24-16-409-054-0000.

All the terms, conditions, provisions and covenants of the Recognition and Attornment Agreement are incorporated in this Memorandum by reference as though written out at length herein, and the Lease and this Memorandum shall be deemed to constitute a single instrument or document.

497402 1021 DBC/CA

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum to be duly executed by their respective signatories thereunto duly authorized as of the date first written above.



(Corporate Seal)

Attest:

Tica M. Taylor

Name: Tica M. Taylor

Its: Assistant Secretary



J.C. PENNEY PROPERTIES, INC.,  
a Delaware corporation

By: [Signature]

Its: Vice President

ook County Clerk's Office

# UNOFFICIAL COPY

KMART CORPORATION, a Michigan corporation

By: J. Kai Gibron

Its: V.P. Real Estate

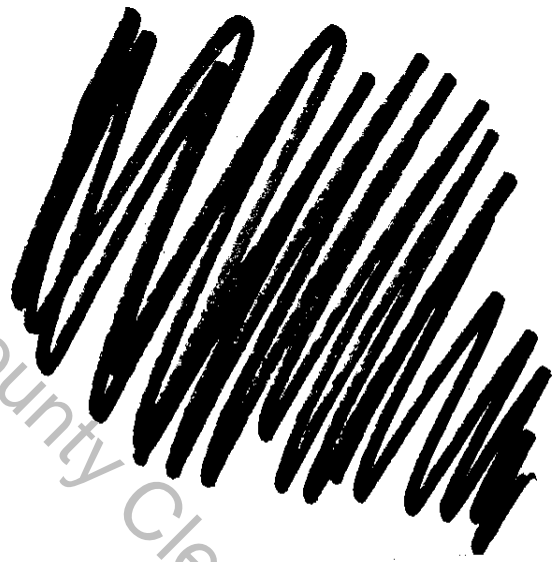
(Corporate Seal)

Attest:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Its:

Property of Cook County Clerk's Office



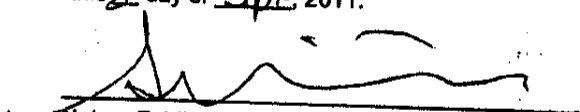
# UNOFFICIAL COPY

STATE OF TEXAS )  
 ) SS.  
COUNTY OF COLLIN )

\* V.P. of

I, Sherrie Mihdawi, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Ron Rosenberg, personally known to me to be the J.C. PENNEY PROPERTIES, INC., and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such V.P. he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 2<sup>nd</sup> day of Sept, 2011.

  
\_\_\_\_\_  
Notary Public

Commission expires 8/2/12



# UNOFFICIAL COPY

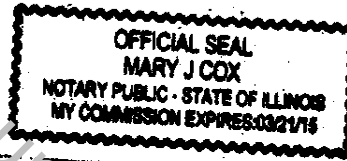
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Mary J. Cox, a Notary Public in and for said County, in the State aforesaid, DO  
HEREBY CERTIFY that Opal Helman, personally known to me to be the VP Real Estate of  
Smart Corporation, and personally known to me to be the same person whose name is subscribed to the  
foregoing instrument, appeared before me this day in person and acknowledged that as such VP  
Real Estate he signed and delivered the said instrument as his free and voluntary act and as the free  
and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 2 day of Sept, 2011.

Mary J. Cox  
\_\_\_\_\_  
Notary Public

Commission expires 3/21/15, 2014



## UNOFFICIAL COPY

EXHIBIT A

August 15, 2011, but effective as of January 29, 2010

Kmart Corporation  
 c/o Sears Holdings  
 3333 Beverly Road  
 Hoffman Estates, Illinois 60179

RE: J.C. Penney Store #5072 - Oak Lawn, Illinois  
 Sublease with Kmart as Direct Lease, Recognition and Attornment Agreement

Ladies and Gentlemen:

Reference is hereby made to that certain Sublease dated as of November 1, 1979, as amended, by and between J. C. Penney Properties, Inc ("Properties"), as Landlord, and Kmart Corporation ("Kmart"), as Tenant (the "Sublease"). The Sublease was originally: 1.) a sublease under that certain Lease and Agreement, dated as of May 1, 1974, (the "Sale/Leaseback Lease") between Pennlawn Associates and Properties, as memorialized by that certain "Memorandum of Lease" recorded with the Cook County Recorder of Deeds (the "County Records") as Document No. 22709543, as amended; and 2.) a sub-sublease under that certain Ground Lease dated as of May 1, 1974 (the "Ground Lease") between J.C. Penney Properties, Inc. and Pennlawn Associates as memorialized by that certain "Memorandum of Ground Lease" recorded with the County Records as Document No. 22709541, as amended (said Sale/Leaseback Lease and Ground Lease being hereinafter collectively referred to as the "Underlying Leases").

The Sale/Leaseback Lease has been terminated effective as of January 29, 2010 by means of that certain "Termination of Lease and Agreement" made as of January 29, 2010 as recorded with the County Records as Document No. 1009529030 and that certain Corrective Termination of Lease and Agreement dated effective as of January 29, 2010, recorded in the County Records in 2011; the Ground Lease has been terminated effective as of January 29, 2010 by means of that certain "Termination of Ground Sublease Agreement" dated as of January 29, 2010, as recorded with the County Records as Document No. 1009529032. Properties represents and warrants to Kmart that as of the date that this Recognition and Attornment Agreement is signed and delivered to Kmart, Properties is the fee title owner of the Demised Premises, as defined in the Sublease. For and in consideration of the parties' mutual promises and covenants, Ten Dollars (\$10) and other good and valuable consideration, the receipt and sufficiency of which the parties mutually acknowledge, the parties hereby agree that, notwithstanding the foregoing termination of the Underlying Leases, the Sublease shall and does remain in full force and effect as a direct lease between Properties, as the fee title owner of the Demised Premises, and Kmart, as tenant for the term therein stated and all options to renew the Extended Term therein contained (consisting of two remaining Extended Terms pursuant to Section 3.3 of the Sublease of five (5) years, each commencing on June 1, 2014 and June 1, 2019 and which, if exercised in accordance with the terms therein, will continue to and including May 31, 2024), and Properties agrees to recognize Kmart as tenant and Kmart agrees to attorn to Properties as landlord thereunder, and same will bind and inure to the benefit of the parties' respective successors and assigns, with said Sublease being no longer subject to the Underlying Leases. Furthermore, Kmart understands that Properties may now or in the future



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assign the Sublease, and upon such assignment, provided that the assignee assumes said Sublease and assignee expressly agrees to and ratifies the terms of this Recognition and Attornment Agreement, Properties will be released and relieved of all liability under the Sublease arising from and after the date of such assignment and assumption.

Further, Properties represents and warrants to Kmart that as of the date this Recognition and Attornment Agreement is signed and delivered to Kmart, all Rent has been paid currently without default, and that to the knowledge of Properties, Kmart is not in breach or default under any provision of the Sublease.

The purpose of this agreement is to formalize and evidence the foregoing relationship, arrangement and agreements.

Our signatures to this agreement will evidence our mutual agreement to the foregoing, and we request that you also evidence your agreement by signing and returning a copy of this letter agreement to the undersigned. Our signatures will also evidence our mutual agreement that we have received good and valuable consideration for this agreement, that this agreement may be executed in multiple counterparts, and that facsimile or pdf signatures will bind the parties so signing.

Very truly yours,

J. C. PENNEY PROPERTIES, INC.



By:

Vice President

PROPERTY OF COOK COUNTY CLERK'S OFFICE

# UNOFFICIAL COPY

STATE OF Texas )  
COUNTY OF Collin ) : ss.:

I, Sherrie Mirdawi, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Tom Konesberg personally known to me to be a V.P. of J. C. PENNEY PROPERTIES, INC., a Delaware corporation, duly licensed to transact business in the State of Illinois, personally known to me be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he/she signed and delivered the said instrument as a V.P. of said corporation, on behalf of said corporation, as his/her free and voluntary act as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 8<sup>th</sup> day of September ~~August~~, 2011.

Sherrie Mirdawi  
Notary Public

(Notarial Seal)

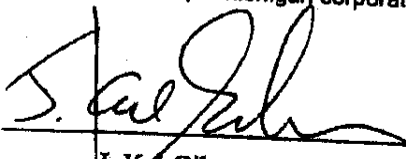


Property of Cook County Clerk's Office

# UNOFFICIAL COPY

AGREED AND ACCEPTED AS OF THE 29th DAY OF January, 2010 by:

KMART CORPORATION, a Michigan corporation

By:   
Name: J. Kal Gibron  
Title: V.P. Real Estate



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF Illinois )  
COUNTY OF Cook ) : ss.:

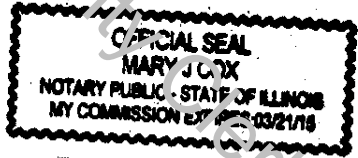
I, MARY J. COX a Notary Public in and for said County, in the State aforesaid, do hereby certify that Robert Hebron personally known to me to be a VP Real Estate of KMART CORPORATION, a Michigan corporation, duly licensed to transact business in the State of Illinois, personally known to me be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and Robert Hebron generally acknowledged that he/she signed and delivered the said instrument as a VP of said corporation, on behalf of said corporation, as his/her free and voluntary act as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 9th SEPTEMBER day of August, 2011.

Mary J. Cox  
Notary Public

(Notarial Seal)

- ecc: Bob Campbell
- Teresa Mitchell
- Renee Magnant
- Margaret Johnson



PROPERTY OF COOK COUNTY CLERK'S OFFICE

**UNOFFICIAL COPY****EXHIBIT B**

All the tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in Cook County, Illinois:

Lot 1 in the Pumpkin Subdivision being a Subdivision of part of the East  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 16, Township 37 North, Range 13, East of the Third Principal Meridian, excepting that part of said Lot 1, lying Southeasterly and Easterly of the following described Lines; beginning at the Southwest corner of Lot 2 in the aforesaid Pumpkin Subdivision; thence Southwesterly 147.164 feet along the Southwesterly extension of the Northwesterly line of said Lot 2 to the point of intersection with a line drawn perpendicularly to the South Line of said Lot 1 at a point on said South Line 781.55 feet East of the Southwest corner of said Lot 1; thence South along said perpendicular Line 188.857 feet to the South line of said Lot 1, also excepting from said Lot 1 a parcel of land described as follows; commencing at the Northeast corner of said Lot 2, being also a corner in said Lot 1; thence Northerly 33.00 feet along the East line of said Lot 2; thence Easterly 5.00 feet along a jog in said Lot 1 to the most Easterly line of said Lot 1; thence Northerly 30.65 feet along said Easterly Line to the point of beginning; thence Westerly 191.65 feet along a line drawn parallel with the North line of said Lot 2; thence Northerly 201.75 feet along a line drawn parallel with the most Easterly line of said Lot 1; thence Easterly 191.65 feet along a line parallel with the North line of said Lot 2 to the most Easterly line of said Lot 1; thence Southerly 201.75 feet along said Easterly line to the point of beginning; all in Cook County, Illinois.

24-16-409-054

11000 S Cicero

DAK LAWN IL

# UNOFFICIAL COPY

## EXHIBIT B

### LEGAL DESCRIPTION OF THE DEMISED PREMISES

Lot 1 in the Pumpkin Subdivision being a Subdivision of part of the East  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of Section 16, Township 37 North, Range 13, East of the Third Principal Meridian, excepting that part of said Lot 1, lying Southeasterly and Easterly of the following described Lines; beginning at the Southwest corner of Lot 2 in the aforesaid Pumpkin Subdivision; thence Southwesterly 147.164 feet along the Southwesterly extension of the Northwesterly line of said Lot 2 to the point of intersection with a line drawn perpendicularly to the South Line of said Lot 1 at a point on said South Line 781, 55 feet East of the Southwest corner of said Lot 1; thence South along said perpendicular Line 188.857 feet to the South line of said Lot 1, also excepting from said Lot 1 a parcel of land described as follows; commencing at the Northeast corner of said Lot 2, being also a corner in said Lot 1; thence Northerly 33.00 feet along the East line of said Lot 1; thence Easterly 5.00 feet along a jog in said Lot 1 to the most Easterly line of said Lot 1; thence Northerly 30.65 feet along said Easterly Line to the point of beginning; thence Westerly 191.65 feet along a line drawn parallel with the North line of said Lot 2; thence Northerly 201.75 feet along a line drawn parallel with the most Easterly line of said Lot 1; thence Easterly 191.65 feet along a line parallel with the North line of said Lot 2 to the most Easterly line of said Lot 1; thence Southerly 201.75 feet along said Easterly line to the point of beginning; all in Cook County, Illinois.

Commonly known as: 11024 South Cicero Avenue, Oak Lawn, Illinois 60453

Permanent Index Number: 24-16-409-054-0000

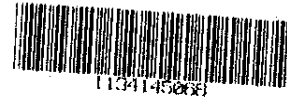
# UNOFFICIAL COPY

EXHIBIT C  
ASSIGNMENT

Property of Cook County Clerk's Office

A large, dense black scribble consisting of multiple overlapping, diagonal strokes, obscuring the text "Property of Cook County Clerk's Office" in the center of the page.

# UNOFFICIAL COPY



Doc#: 1134145068 Fee: \$86.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/07/2011 03:14 PM Pg: 1 of 9

## ASSIGNMENT AND ASSUMPTION OF LESSOR'S INTEREST IN SUBLEASE

THIS AGREEMENT, made as of the 30th day of November, 2011 (the "Effective Date"), by and between J. C. PENNEY PROPERTIES, INC., a Delaware corporation (hereinafter referred to as "Assignor"), and The Village of Oak Lawn, IL, an Illinois municipality (hereinafter referred to as "Assignee").

### WITNESSETH:

WHEREAS, Assignor has conveyed to Assignee certain real property located at the northwest corner of 11<sup>th</sup> Street and South Cicero Avenue in Cook County, Illinois and more particularly described in Exhibit "A" hereof (the "Property"); and

WHEREAS, Assignor entered into a Sublease, described on Exhibit "B" attached hereto and made a part hereof ("Sublease") as Landlord with Kmart Corporation ("Kmart"), as Tenant, said Sublease being executed on November 1, 1979 and leasing to Tenant a portion of the Property as more particularly described in Exhibit "C" (the "Demised Premises") hereof, which Sublease was expressly recognized and converted into a direct lease between Assignor as fee title owner of the Property and Kmart, as tenant, dated August 15, 2011 but effective as of January 29, 2010, pursuant to a Recognition and Attornment Agreement between Assignor and Kmart, a Memorandum of which is being recorded in the Cook County Office of the Recorder of Deeds (the "Recognition Agreement"); and

WHEREAS, Assignor desires to assign its interest in said Sublease to Assignee; and

WHEREAS, Assignee is entering this Agreement pursuant to its home rule powers and its determination that the Agreement will benefit and enhance the Village of Oak Lawn; and

WHEREAS, Assignee finds the powers exercised hereunder to be in furtherance of a public use and essential to the public interest; and

WHEREAS, the President and the Board of Trustees have determined that entering into this Agreement is in the best interest of Assignee.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) in hand paid by Assignee to Assignor, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor hereby assigns to Assignee all its right, title and interest in the Sublease.

NCS - 497402 L.C.

2 of 2



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1. As of the Effective Date, Assignor hereby assigns, transfers, delivers and sets over to Assignee, and the Assignee assumes from the Assignor, all of Assignor's right, title and interest in and to the Sublease.
2. Assignee hereby expressly assumes and accepts all the terms, conditions, and covenants of the Sublease and covenants and agrees that it will comply with and be bound by all such terms, conditions and covenants and hereby assumes all obligations and liabilities of the Assignor, as landlord, under the Sublease accruing on and after the Effective Date, for the benefit of the Assignee and Kmart, as tenant under the Sublease, its successors and assigns, and expressly agrees to and ratifies the terms of the Recognition Agreement.
3. Assignor hereby agrees to indemnify Assignee against and hold Assignee harmless from and against any and all liability, injury, loss, cost, damage and/or expense (including reasonable attorney's fees and expenses) that Assignee may sustain by reason of Assignor's failure to fully perform all of the obligations on the part of the landlord to be performed under the Sublease prior to the Effective Date. The provisions of this paragraph shall survive the expiration of the Sublease.
4. Assignee hereby agrees to indemnify Assignor against and hold Assignor harmless from and against any and all liability, injury, loss, cost, damage and/or expense (including reasonable attorney's fees and expenses) that Assignor may sustain by reason of Assignee's failure to fully perform all of the obligations on the part of the landlord to be performed under the Sublease on or after the Effective Date. The provisions of this paragraph shall survive the expiration of the Sublease.
5. All of the terms and conditions of the Sublease shall remain and continue in full force and effect and shall be deemed unchanged except to the extent expressly provided herein.
6. In the event that any one or more of the provisions, paragraphs, words, clauses, phrases or sentences contained in this Assignment, or the application thereof in any circumstance is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision, paragraph, word, clause, phrase or sentence in every other respect and of the remaining provisions, paragraphs, words, clauses, phrases or sentences of this Assignment shall not be in any way impaired, it being the intention of the parties that this Assignment shall be enforceable to the fullest extent permitted by law.
7. This Agreement shall inure to the benefit of the parties hereto, their successors and assigns, and to the benefit of Kmart, as third party beneficiary hereof, and its successors and assigns under the Sublease.
8. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.
9. This Agreement may be executed in multiple counterparts, which will be deemed one and the same agreement.

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties herein have hereunto caused this instrument to be executed as of the Effective Date.

**ASSIGNOR:**

J. C. Penney Properties, Inc.,  
a Delaware corporation

By: *Ros Ramesberg*  
Name: Ros Ramesberg  
Title: VICE PRESIDENT

APPROVED  
*R/R*  
ATTORNEY

APPROVED  
*RCC*  
REAL ESTATE

**ASSIGNEE:**

The Village of Oak Lawn, IL,  
a Illinois municipality

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties herein have hereunto caused this instrument to be executed as of the Effective Date.

**ASSIGNOR:**

J. C. Penney Properties, Inc.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

The Village of Oak Lawn, IL,  
a Illinois municipality

By: Harry B. DeJong  
Name: \_\_\_\_\_  
Title: Village Manager

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STATE OF TEXAS            )  
  )SS.:  
COUNTY OF COLLIN        )

This instrument was acknowledged before me on November 8, 2011, by Ron Romesberg, a Vice President of J. C. PENNEY PROPERTIES, INC., a Delaware corporation, on behalf of said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:



Gladys F. Harris  
Notary Public, State of Texas

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## EXHIBIT "A"

### LEGAL DESCRIPTION

Lots 1 and 2 in The Pumpkin Resubdivision, being a Resubdivision of Lot 1 of The Pumpkin Subdivision, being a Subdivision of part of the East 1/2 of the Southeast 1/4 of Section 16, Township 37 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois, according to the Plat of said The Pumpkin Resubdivision recorded August 13, 1981 as document 25967827; excepting from Lot 1 that part taken for road purposes by document 96393571.

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## EXHIBIT "B"

### DESCRIPTION OF SUBLEASE

Sublease dated November 1, 1979; by and between J. C. Penney Properties, Inc., as landlord, and K Mart Corporation, as tenant, a Memorandum of which was filed for record on November 7, 1979, and duly recorded in the County Records as Document No. 25229754, as amended and/or supplemented by Letter of Indemnification as to Plat Act dated November 1, 1979; Letter to K Mart Corporation dated November 1, 1979 agreed to by K Mart re: commencement date and taxes; letter dated May 28, 2003 exercising option to extend term; and notice dated May 19, 2008 exercising second option to extend term until May 31, 2014, and Recognition and Attornment Agreement dated as of August 15, 2011, to be effective as of January 29, 2010.

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## EXHIBIT "C"

### DEMISED PREMISES UNDER SUBLEASE

All the tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in Cook County, Illinois:

Lot 1 in the Pumpkin Subdivision being a Subdivision of part of the East  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of Section 16, Township 37 North, Range 13, East of the Third Principal Meridian, excepting that part of said Lot 1, lying Southeasterly and Easterly of the following described Lines; beginning at the Southwest corner of Lot 2 in the aforesaid Pumpkin Subdivision; thence Southwesterly 147.164 feet along the Southwesterly extension of the Northwesterly line of said Lot 2 to the point of intersection with a line drawn perpendicularly to the South Line of said Lot 1 at a point on said South Line 781.55 feet East of the Southwest corner of said Lot 1; thence South along said perpendicular Line 188.857 feet to the South line of said Lot 1, also excepting from said Lot 1 a parcel of land described as follows; commencing at the Northeast corner of said Lot 2, being also a corner in said Lot 1; thence Northerly 33.00 feet along the East line of said Lot 1; thence Easterly 5.00 feet along a jog in said Lot 1 to the most Easterly line of said Lot 1; thence Northerly 30.65 feet along said Easterly Line to the point of beginning; thence Westerly 191.65 feet along a line drawn parallel with the North line of said Lot 2; thence Northerly 201.75 feet along a line drawn parallel with the most Easterly line of said Lot 1; thence Easterly 191.65 feet along a line parallel with the North line of said Lot 2 to the most Easterly line of said Lot 1; thence Southerly 201.75 feet along said Easterly line to the point of beginning; all in Cook County, Illinois.

11024 S. Cicero Ave, Oak Lawn IL

24-16-409-055  
- 054



# UNOFFICIAL COPY

**EXHIBIT D**  
**LETTER AGREEMENT**

Property of Cook County Clerk's Office

A large, dense black scribble consisting of many overlapping, vertical and slightly curved lines, completely obscuring any text or graphics that might have been present in the center of the page.

**UNOFFICIAL COPY**

Querrey & Harrow, Ltd.  
175 West Jackson Boulevard  
Suite 1600  
Chicago, IL 60604-2827

TEL (312)540-7000  
FAX (312)540-0578

www.querrey.com

**Querrey & Harrow**

*Other Offices:*  
Joliet, IL  
Waukegan, IL  
Wheaton, IL  
Merrillville, IN

Daniel F. Gallagher  
Direct Line: (312) 540-7674  
E-mail: dgallagher@querrey.com

January 27, 2012

Via e-mail: john.lawlor@snrdenton.com

John J. Lawlor  
SNR Denton US LLP  
233 South Wacker Drive  
Suite 7800  
Chicago, IL 60606-6404

Re: *Kmart v. Village of Oak Lawn Settlement Agreement*  
Case No. 06 CH 018001  
Our File: 51537-DFG/STL

Dear Jack:

Please allow the following to serve as confirmation of our telephone conversation of this morning. As you know, the Village of Oak Lawn is now the Landlord under the Sublease dated November 21, 1979, for the property located at 11024 S. Cicero Avenue, Chicago, Illinois and pursuant to which Kmart Corporation is the Tenant ("Lease"). Pursuant to the Lease, rent is due on or before the tenth of the month. As you know, we are in the process of negotiating the draft settlement documents. In order to allow Landlord and Tenant time to review and finalize the settlement documents, the Landlord agrees that Tenant does not have to make the February 2012 rent payment by February 10, 2012 and may delay such payment while the Landlord and Tenant in good faith continue negotiating the settlement documents. However, this agreement shall not be viewed as a waiver of the Landlord's right to the February 2012 rent should the parties not be able to finalize the settlement documents. All other Tenant obligations under the Lease remain in full force and effect. To acknowledge your and Tenant's agreement to the above, please execute a copy of this letter and return it to my attention.

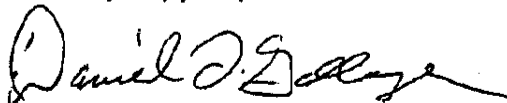
Also, enclosed please find a copy of the letter from Albert A. Boumenot, Senior Vice President, Illinois Public Finance, George K. Baum & Company, regarding Oak Lawn's ability to finance a settlement.

If you have any questions, please do not hesitate contacting me.

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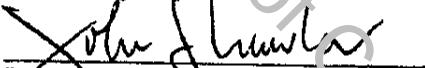
John J. Lawlor  
SNR Denton US LLP  
January 27, 2012  
Page 2 of 2

Very truly yours,

  
Daniel F. Gallagher

Acknowledged and agreed to by:

Kmart Corporation



By: John J. Lawlor  
Its: Attorney

cc. Larry Deetjen via e-mail

Document #: 1621454

Property of Cook County Clerk's Office

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**George K. Baum & Company**  
INVESTMENT BANKERS SINCE 1928

January 27, 2012

Mr. Larry R. Deetjen CM  
Village Manager  
Village of Oak Lawn  
9446 S. Raymond Ave.  
Oak Lawn, Illinois 60453

Dear Mr. Deetjen:


George K. Baum & Company has reviewed the terms of the "lease buyout" with Sears. It is our opinion that the Village has sufficient funds on hand to meet the financial obligations of the "lease buyout". Funds are available in the 111<sup>th</sup> & Cicero Tax Increment Fund and there are additional funds remaining in the 2010 Build America Bond Fund that can be used for economic development purposes. If you have any questions or need additional information please call.

Sincerely,

Albert A. Boumenot  
Senior Vice President  
Illinois Public Finance  
[boumenot@gkbaum.com](mailto:boumenot@gkbaum.com)

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## EXHIBIT E



### CERTIFICATE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)  
02/08/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

If this certificate is being prepared for a party who has an insurable interest in the property, do not use this form. Use ACORD 27 or ACORD 28.

<b>PRODUCER</b> Aon Risk Services Central, Inc. Chicago IL Office 200 East Randolph Chicago IL 60601 USA	<b>CONTACT NAME</b> PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (847) 953-5180 E-MAIL ADDRESS PRODUCER CUSTOMER ID #: 570000034159																					
<b>INSURER</b> Sears Holdings Corporation dba Sears Corporation Attn: Risk Management E3-219A 3333 Beverly Blvd Hoffman Estates IL 60179 USA	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A:</td> <td>ACE American Insurance Company</td> <td>22667</td> </tr> <tr> <td>INSURER B:</td> <td>Executive Risk Specialty Insurance Co.</td> <td>44792</td> </tr> <tr> <td>INSURER C:</td> <td>Underwriters At Lloyds London</td> <td>15792</td> </tr> <tr> <td>INSURER D:</td> <td>Lexington Insurance Company</td> <td>19437</td> </tr> <tr> <td>INSURER E:</td> <td>Liberty Surplus Insurance Corporation</td> <td>10725</td> </tr> <tr> <td>INSURER F:</td> <td>Tokio Marine &amp; Nichido Fire Ins Co USA</td> <td>12904</td> </tr> </table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	ACE American Insurance Company	22667	INSURER B:	Executive Risk Specialty Insurance Co.	44792	INSURER C:	Underwriters At Lloyds London	15792	INSURER D:	Lexington Insurance Company	19437	INSURER E:	Liberty Surplus Insurance Corporation	10725	INSURER F:	Tokio Marine & Nichido Fire Ins Co USA	12904
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**COVERAGES**      **CERTIFICATE NUMBER:** 570045252077      **REVISION NUMBER:**

LOCATION OF PREMISES DESCRIBED IN PROPERTY (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The Village of Oak Lawn is included as Loss Payee as required by written contract, but limited to the operations of the Insured under said contract, with respect to the with respect to the commercial property policy as respects property located at 110000 S. Cicero Avenue, Oak Lawn IL, 60453.

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY AGREEMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSURER LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	COVERED PROPERTY	LIMITS
D	X PROPERTY	W1100757	08/01/2011	08/01/2012	BUILDING	
C	CAUSES OF LOSS	Lexington			PERSONAL PROPERTY	
F	BASIC BLDG	W1100755	06/01/2011	06/01/2012	BUSINESS INCOME	
F	BROAD CONTENTS	Lloyds			Life Extra Expense	Excluded
A	X SPECIAL	LCP648016700	06/01/2011	06/01/2012	EXTRA EXPENSE	
A	X EARTHQUAKE	Tokio			RENTAL VALUE	
E	X WIND	SPAD37872490	06/01/2011	06/01/2012	BLANKET BUILDING	
E	X FLOOD	ACE			BLANKET PERM PROP	
C	X Bldg Equip Def	LINESPO0167042P	07/01/2011	06/01/2012	BLANKET BLDG & PP	\$40,000,000
		Liberty			X Earthquake	\$100,000,000
		W1100756	06/01/2011	06/01/2012	X Flood	\$100,000,000
		Lloyds				
	INLAND MARINE	TYPE OF POLICY				
	CAUSES OF LOSS	POLICY NUMBER				
	NAMED PERILS					
	CRIME					
	TYPE OF POLICY					
	BOLTER & MACHINERY / EQUIPMENT BREAKDOWN					

**SPECIAL CONDITIONS / OTHER COVERAGES** (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Replacement Cost Valuation; No Coinsurance; Waiver of Subrogation included; Mold Coverage Excluded; All real and personal property owned, acquired by, used by, intended for use by the insured, including real and personal property of others in the insured's care, custody or control; extra expense, contingent extra expense, rents, rental income, leasehold interests, value.

<b>CERTIFICATE HOLDER</b>  The Village of Oak Lawn c/o Finance Department 9446 South Raymond Avenue Oak Lawn IL 60453 USA	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE  <i>Aon Risk Services Central, Inc.</i>
--	--

# UNOFFICIAL COPY

**Attachment to ACORD Certificate for Sears Holdings Corporation**

The terms, conditions and provisions noted below are hereby attached to the captioned certificate as additional description of the coverage afforded by the insurer(s). This attachment does not contain all terms, conditions, coverages or exclusions contained in the policy.

**INSURED**

Sears Holdings Corporation  
 dba Kmart Corporation  
 Attn: Risk Management E3-219A  
 3333 Beverly Road  
 Hoffman Estates IL 60179 USA

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER	
INSURER	
INSURER	
INSURER	

**ADDITIONAL POLICIES** If a policy below does not include limit information, refer to the corresponding policy on the ACORD certificate form for policy limits.

INBR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	COVERED PROPERTY	LIMITS
	PROPERTY					
P		WB11007 Lexington	05/01/2011	06/01/2012	Wind/Hall Limit	Included
B		44681225 Lloyds	05/01/2011	06/01/2012		

Certificate Number : 570045252077

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AGENCY CUSTOMER ID: 57000034159  
 LOC #:

## ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

<b>AGENCY</b> Aon Risk Services Central, Inc.		<b>NAMES INSURED</b> Sears Holdings Corporation	
<b>POLICY NUMBER</b> See Certificate Number: 570045252077		<b>EFFECTIVE DATE</b> (blank)	
<b>CARRIER</b> See Certificate Number: 570045252077	<b>NAC CODE</b> (blank)	(blank)	

**ADDITIONAL REMARKS**

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
 FORM NUMBER: ACORD 24 FORM TITLE: Certificate of Property Insurance

LOCATION OF PREMISES / DESCRIPTION OF PROPERTY

Property of Cook County Clerk's Office

**SPECIAL CONDITIONS / OTHER COVERAGES**  
 papers, and records, accounts receivable and other coverage's further described in the policy form. The coverage shown hereon apply only to the extent required by written lease/contract.

ACORD 101 (2008/04)

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 The ACORD name and logo are registered marks of ACORD

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## CERTIFICATE OF LIABILITY INSURANCE

DATE(MMDDYYYY)  
02/08/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Risk Services Central, Inc. Chicago IL office 200 East Randolph Chicago IL 60601 USA	<b>CONTACT NAME</b> PHONE (AC, No, Ext): (866) 283-7122      FAX (AC, No.): (847) 953-5390 E-MAIL ADDRESS: ADDRESS:														
<b>INSURER</b> Sears Holding Corporation dba Risk Management Attn: Risk Management E3-213A 3333 Beverly Road Hoffman Estate, IL 60179 USA	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td>INSURER A: Indemnity Insurance Co of North America</td> <td>43575</td> </tr> <tr> <td>INSURER B: ACE American Insurance Company</td> <td>22667</td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Indemnity Insurance Co of North America	43575	INSURER B: ACE American Insurance Company	22667	INSURER C:		INSURER D:		INSURER E:		INSURER F:	
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INSURER B: ACE American Insurance Company	22667														
INSURER C:															
INSURER D:															
INSURER E:															
INSURER F:															

**COVERAGES**      **CERTIFICATE NUMBER: 570045252029**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR IN ANY MANNER, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.      *Limits shown are as requested*

TYPE	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFF. DATE (MMDDYYYY)	POLICY EXPI. DATE (MMDDYYYY)	LIMITS
1	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PERIOD <input type="checkbox"/> LOC	ADOG25530962	08/01/2011	08/01/2012	EACH OCCURRENCE \$5,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$5,000,000 MED EXP (Any one person) Excluded PERSONAL & ADV INJURY \$5,000,000 GENERAL AGGREGATE \$5,000,000 PRODUCTS - COMP/OP AGG \$5,000,000
2	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS UMBRELLA LIAB OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION	ISAH08690637 ISAH08690649	08/01/2011 08/01/2011	08/01/2012 08/01/2012	COMBINED SINGLE LIMIT (Per accident) \$5,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
3	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/OWNER EXCLUDED? (Mandatory in HI) If yes, describe under DESCRIPTION OF OPERATIONS below	SCPC46482827 WLRC46482815 WLRC46482809	08/01/2011 08/01/2011 08/01/2011	08/01/2012 08/01/2012 08/01/2012	<input checked="" type="checkbox"/> Y (WC STATE) <input type="checkbox"/> OTHER <input type="checkbox"/> N (TORY LIMIT) \$1 EACH ACCIDENT \$2,000,000 \$1 DI BASE-BA EMPLOYEE \$2,000,000 \$100,000 POLICY LIMIT \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 441, Additional Remarks Schedule, if more space is required)  
 Re: The village of Oak Lawn is included as Additional Insured as required by written contract, but limited to the operations of the Insured under said contract with respect to the General Liability policy.

<b>CERTIFICATE HOLDER</b>  The Village of Oak Lawn c/o Finance Department 9446 South Raymond Avenue Oak Lawn IL 60453 USA	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Aaron Paul Services Central, Inc.</i>
--	--



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## **Exhibit F Landlord's Storm Drainage and Public Improvements**

Landlord intends to undergo exploratory and survey work in the far northeast quadrant of the Premises currently under lease by Tenant. Work is needed to examine infrastructure condition and specific location of water, storm, and sanitary lines owned and operated by the Landlord to determine condition and feasibility for renovation to extend life and/or replacement consistent with master redevelopment plan under consideration by Landlord. It is fully understood that any such exploratory and/or construction work will be done in a fashion not to hinder parking on the far southwest, central west, and northwest existing parking lot that currently serves Tenant's customers and deliveries. The work will be performed by Landlord crews and/or contractors engaged by the Landlord. The work will be performed in the Landlord Work Zone and in the general location depicted on Exhibit G.

Property of Cook County Clerk's Office

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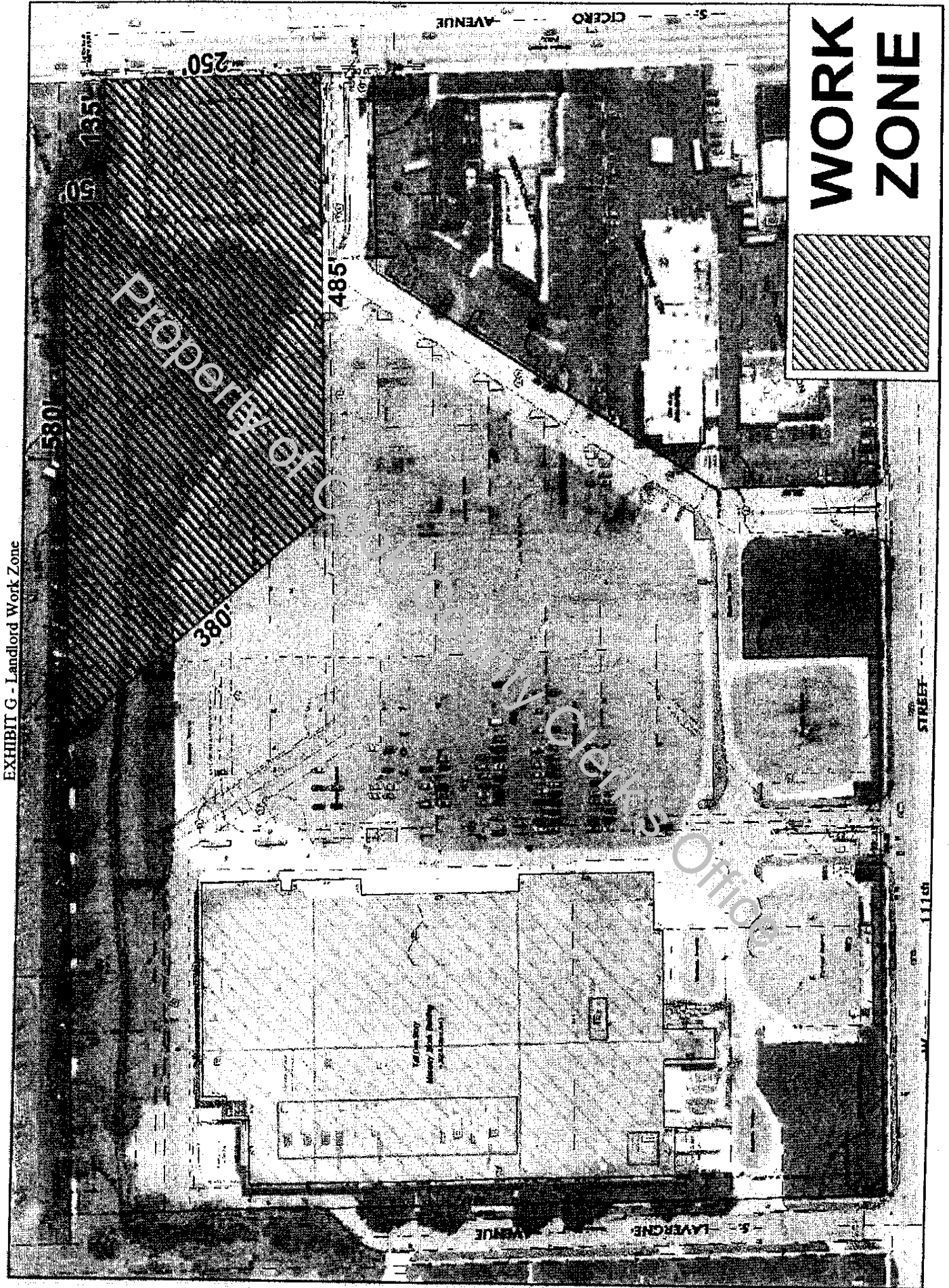


EXHIBIT G - Landlord Work Zone

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## EXHIBIT H

### IN THE CIRCUIT COURT OF COOK COUNTY COUNTY DEPARTMENT, CHANCERY DIVISION

KMART CORPORATION, a Michigan corporation,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 06-CH-18001
	)	
THE VILLAGE OF OAK LAWN, an Illinois municipality,	)	Judge Carolyn Quinn
	)	
Defendant.	)	

### STIPULATION TO DISMISS

Plaintiff KMART CORPORATION ("Kmart") and Defendant THE VILLAGE OF OAK LAWN (the "Village") having resolved all matters in controversy among them, hereby stipulate to the entry of the Agreed Order of Dismissal, attached hereto as Exhibit 1.

SO AGREED AND STIPULATED:

Dated: February \_\_, 2012

Respectfully submitted,

By: _____ <i>One of the Attorneys for Plaintiff Kmart Corporation</i>  Firm No.: 47568 Natalie J. Spears SNR Denton US LLP 233 South Wacker Drive, Suite 7800 Chicago, IL 60606 Ph: (312) 876-8000	By: _____ <i>One of the Attorneys for Defendant Village Of Oak Lawn</i>  Mr. Daniel Gallagher Mr. Kevin Casey Querrey & Harrow, Ltd. 175 West Jackson Blvd., Ste. 1600 Chicago, IL 60604 Ph: (312) 540-7000
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# UNOFFICIAL COPY

## IN THE CIRCUIT COURT OF COOK COUNTY COUNTY DEPARTMENT, CHANCERY DIVISION

KMART CORPORATION, a  
Michigan corporation,

Plaintiff,

v.

THE VILLAGE OF OAK LAWN,  
an Illinois municipality,

Defendant.

Case No. 06-CH-18001

Judge Carolyn Quinn

### AGREED ORDER OF DISMISSAL

This cause coming to be heard on the Parties' stipulation to dismiss this matter with prejudice and with each party to bear its own costs and attorney's fees, the parties having appeared through their counsel and having entered into a Confidential Settlement and Mutual Release Agreement, and the court having been duly advised in the premises, IT IS HEREBY ORDERED THAT:

- (1) This action is dismissed in its entirety with prejudice, with each party to bear its own costs and attorney's fees.
- (2) This court shall retain jurisdiction to enforce the terms of the Confidential Settlement and Mutual Release Agreement in this action.

Dated: February \_\_, 2012

By: _____ <i>One of the Attorneys for Plaintiff Kmart Corporation</i>  Firm No.: 47568 Natalie J. Spears SNR Denton US LLP 233 South Wacker Drive, Suite 7800 Chicago, IL 60606 Ph: (312) 876-8000	By: _____ <i>One of the Attorneys for Defendant Village Of Oak Lawn</i>  Mr. Daniel Gallagher Mr. Kevin Casey Querrey & Harrow, Ltd. 175 West Jackson Blvd., Ste. 1600 Chicago, IL 60604 Ph: (312) 540-7000
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ENTERED:

\_\_\_\_\_  
Judge Carolyn Quinn