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SUPPLEMENTAL AGREEMENT

This Supplemental Agreement is made as of this 31st day of July, 1991 by and among KMART CORPORATION, a Michigan corporation, having its principal address at 3100 West Big Beaver, Troy, Michigan 48084 ("Kmart"); SECURITY PACIFIC NATIONAL BANK, a national banking association, having its principal corporate trust office at 555 Anton Boulevard, Costa Mesa, California 92626, as Trustee under the Indenture dated of even date herewith ("Trustee"); and FIRST BERKSHIRE BUSINESS TRUST, a Delaware business trust, having its principal office at c/o Bulkley, Richardson and Gelinas, Suite 2700, BayBank Tower, 1500 Main Street, P.O. Box 15507, Springfield, Massachusetts 01115-5507 ("Issuer").

## RECITALS:

A. Pursuant to a certain Agreement for Sale of Real Estate dated as of May 15, 1991 between Kmart and CP Holdings IX, Inc. ("CP"), as amended and assigned by CP to Issuer by Assignment of even date herewith ("Purchase Agreement"), Kmart has sold to Issuer certain land and improvements in the City of Countryside, County of Cook, State of Illinois, as more specifically described on Exhibit A attached hereto ("Property"), and Kmart has leased back the Property pursuant to a lease of even date herewith ("Lease").

B. Issuer has issued its Class A, Class B, Class C and Class Z Bonds (collectively "Bonds"), pursuant to the Indenture to finance a portion of the acquisition cost of the Property.

C. Issuer has secured its obligations under the Bonds and Substitute Note ("Substitute Note") if and when issued in substitution thereof with, among other things, an Indenture between Issuer and Trustee ("Indenture"), a Mortgage on the Property ("Mortgage") and a Present Assignment of Leases and Rents assigning Issuer's rights under the Lease ("Assignment"), all of even date herewith.

D. Pursuant to the Assignment, Issuer has assigned its right to receive annual minimum rental (as defined in the Lease) and percentage rental, if any (collectively, "Rent") under the Lease to Trustee and by this Agreement is directing Kmart to pay such Rent directly to Trustee.

E. Trustee has requested on behalf of the purchasers of the Bonds that, notwithstanding any grounds for non-payment of annual minimum rental under the Lease or any claims that Kmart, as tenant, may have against Issuer as its landlord under the Lease, Kmart grant assurances to Trustee that, until the portion of the principal amount of indebtedness evidenced by the Bonds and accrued interest thereon which relates to the Property ("Property Indebtedness") is paid in full, subject to certain rights and remedies of Kmart as hereinafter set forth, annual minimum

Countryside, IL  
Store #1531  
07/30/91

30 mail

CX40446

First Amendment to the Order

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rental will be paid to Trustee as it becomes due during the primary term and first renewal term of the Lease. Trustee and Issuer acknowledge, respectively, that as of the date hereof the Property Indebtedness is

and the annual minimum rental under the Lease is

F. The purchasers of the Bonds have advised Trustee that they are not willing to purchase the Bonds unless this Agreement is executed and delivered.

NOW, THEREFORE, in consideration of the purchase of the Bonds by the purchasers, the mutual promises and undertakings herein made and the mutual benefits to be derived therefrom, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties represent, covenant and agree as follows:

1. Payment of Rental. Issuer hereby authorizes and directs Kmart and Kmart hereby agrees to pay directly to Trustee, or in accordance with each subsequent written direction received from Trustee with not less than thirty (30) days' prior written notice, until the Property Indebtedness is paid in full, each installment of Rent as it becomes due during the initial twenty-five (25) year primary term of the Lease and the first five (5) year renewal term of the Lease. Kmart further agrees to pay any default rate of interest on the Bonds occasioned by Kmart's late payment of annual minimum rental. Issuer agrees that the foregoing authorization and direction of payment is irrevocable and will not take any action as landlord under the Lease or make any other direction which is inconsistent herewith and any such action or direction is hereby void.

Subject to the rights and remedies of Kmart set forth in Sections 2, 4, 5, 6, 8 and 9 below, the payment of that portion of Rent constituting annual minimum rental shall be made regardless of any abatement, or any right of setoff or counterclaim or other defense which Kmart may have against Issuer, Trustee, or any successor assignee under the Assignment or successor landlord under the Lease and regardless of whether the Lease is terminated by operation of law or otherwise, it being the intent hereof that, until the Property Indebtedness is paid in full, Kmart shall be absolutely and unconditionally obligated as to Trustee to pay each installment of annual minimum rental during the primary term and first renewal term of the Lease, notwithstanding anything contained in the Lease to the contrary.

Notwithstanding the provision of Section 14 of the Lease which provides for a reduction of annual minimum rental in the event of a partial taking of the building thereby demised, Kmart hereby agrees that the annual minimum rental payable under the Lease shall not be reduced provided that the full amount of the award payable by reason of such expropriation is released from the lien of the Indenture and Mortgage. If the full amount of the award is not so released, annual minimum rental

payable under the Lease shall be reduced in the manner and at the time provided for in the Lease.

To the extent that any annual minimum rental payable pursuant to the preceding paragraph exceeds what would otherwise be paid by Kmart under the Lease, such excess annual minimum rental shall be subject to Kmart's offset rights as provided in Section 6 below, except that interest shall accrue on such excess from the dates of rental payments at a rate of interest equal to the rate of interest announced from time to time by Citibank, N.A., as its "base rate." In the event the award is in excess of the cost to restore the Property, Issuer agrees that the excess shall be made available to Kmart to be applied in reduction of Kmart's obligation to pay annual minimum rental hereunder to the extent that such payments exceed the annual minimum rental which would otherwise have been payable under the Lease.

2. Lease Termination Due to Casualty or Condemnation. In the event Kmart is entitled and elects to terminate the Lease, or the Lease by its terms terminates pursuant to Section 13 or Section 14 of the Lease, Kmart shall be deemed to have made an irrevocable offer to purchase the Property covered by the terminated Lease from Issuer, effective as of the termination date, for a purchase price payable by its execution and delivery of a Purchase Money Note (as hereinafter defined) dated as of the termination date and in an amount equal to the Property Indebtedness outstanding at the termination date. Unless Issuer rejects Kmart's offer to purchase the Property in writing within sixty (60) days following the date Trustee receives written notice of such termination or of Kmart's election to terminate the Lease under the Indenture, Issuer shall upon the expiration of such sixty (60) day period be deemed to have accepted Kmart's offer on the terms and conditions set forth herein. Issuer shall not reject Kmart's offer to purchase the Property as provided herein and Kmart shall not accept any such rejection by Issuer, without the written consent of Trustee.

In the event Issuer accepts Kmart's offer to purchase the Property, Issuer agrees as of the termination date to transfer all of its right, title and interest in the Property, including any and all insurance proceeds or condemnation awards, to Kmart by assignment and the same form of deed or other instrument of conveyance by which title was conveyed to Issuer, subject only to those exceptions of record as of the date hereof or such other exceptions as have not been created or caused by the acts of Issuer without consent to or direction by Kmart other than the liens and security interests securing the Bonds. Issuer hereby grants to Trustee the right and power to execute and deliver on behalf of Issuer, as its agent and attorney-in-fact, an appropriate deed and other instruments necessary to effectuate such conveyance and Kmart agrees to accept any such deed or other instrument executed and delivered by Trustee as Issuer's attorney-in-fact or agent. The agency and power of attorney created by the immediately preceding sentence is coupled with an interest and is irrevocable.

Upon Kmart's acquisition of the Property as aforesaid, Kmart shall execute a purchase money note in favor of Issuer in the amount of the Property Indebtedness and on other terms identical to the Bonds including the Redemption Premium ("Purchase Money Note"). The Purchase Money Note shall be pledged to the Trustee under the Indenture to secure the Bonds. Kmart agrees to make principal and interest payments on the Purchase Money Note as they become due in the same manner as payments on the Property Indebtedness under the Indenture directly to Trustee to be applied against the Property Indebtedness until it is paid in full. Upon payment of the Property Indebtedness by Kmart to Trustee as aforesaid, the Purchase Money Note shall be cancelled and the Mortgage and other documents relating to the Property which secure the Property Indebtedness shall be released from the Property.

In the event Kmart shall have executed a Purchase Money Note, upon receipt by Kmart of any insurance proceeds or condemnation award related to the Property acquired by Kmart in accordance herewith, Kmart shall give Trustee written notice of the receipt of such award and shall be deemed to have made an irrevocable offer to pay the same to Trustee. Trustee shall have thirty (30) days from the date of such offer within which to accept or reject the same. If Trustee notifies Kmart of its acceptance of such offer within such thirty (30) day period, Kmart shall within fifteen (15) days following the date of such acceptance pay the full amount of the insurance proceeds (or the equivalent if Kmart is self-insuring) or condemnation award, as the case may be, to Trustee upon which the Property Indebtedness and the Purchase Money Note shall be reduced by the full amount of the insurance proceeds or condemnation award paid to Trustee after application of such proceeds or awards to any Redemption Premium due under the Indenture. If Trustee does not specifically accept such offer within such thirty (30) period as aforesaid, it shall be deemed to have rejected the same and Kmart shall be entitled to retain the full amount of the insurance proceeds or condemnation award.

In the event Issuer rejects Kmart's offer to purchase the Property in accordance herewith, Trustee, Issuer and Kmart agree that Kmart's obligation under the second paragraph of Section 1 hereof to pay annual minimum rental to Trustee shall terminate.

3. Further Assurance. If any lien, encumbrance or charge of any kind based on any claim against Issuer including, without limitation, any claim for income, franchise or other taxes (whether federal, state or otherwise) shall be asserted or filed against the Property or against any amount payable by Kmart under or pursuant to the Lease, it shall constitute a default by Issuer under the Lease, notwithstanding anything in the Lease to the contrary. In the event such claim interferes with the due payment of annual minimum rental by Kmart to Trustee or subjects Trustee to any obligation to refund any monies received under the Assignment, then Kmart agrees to pay directly to Trustee (or as Trustee may direct) a sum of money (in addition to all other amounts payable by Kmart under the Lease) equal to the amount of annual minimum rental which would otherwise have been paid to Trustee or which has been refunded by Trustee.

4. Landlord Default. In the event Issuer shall be in default of any of its obligations as landlord under the Lease and such default continues to exist after notice to Issuer and after an applicable cure period, if any, Kmart shall be entitled to exercise any of its rights and remedies against Issuer as permitted by law or under the Lease including, without limitation, any rental offset, provided that Kmart shall continue to pay directly to Trustee the annual minimum rental until the earlier of the date (a) the Property Indebtedness is paid in full or (b) the termination of the first renewal term of the Lease.

5. Subrogation Rights. If and to the extent Kmart shall pay any monies to the Trustee pursuant to this Agreement beyond Kmart's obligations to landlord under the Lease, the parties hereto agree that such payments shall be deemed payments to the bondholders made pursuant to a guaranty and Kmart shall be deemed a guarantor of the Bonds to the extent of such payments. In such event, Kmart shall be subrogated, to the fullest extent permitted by law, to all rights of the bondholders against Issuer, and all rights and interests in and to the Property, to the extent of such payments.

6. Additional Offset Rights. In addition to any rights and remedies provided by law, the Lease or this Agreement, following the earlier of the expiration of the first renewal term or such time as the Property Indebtedness and Redemption Premium, if any, is fully paid, Kmart shall be entitled to offset against Rent then and thereafter due and owing under the Lease any amounts it has paid pursuant to this Agreement beyond what was required to be paid by it under the Lease ("Individual Lease Expenses"), together with interest accruing from the date of payment at the greater of 15% per annum or the highest rate then permitted by law and its reasonable costs and attorneys' fees.

In addition to the foregoing, Issuer hereby grants to Kmart the right to recover its Individual Lease Expenses as defined herein (excluding any excess annual minimum rental payments made by Kmart in accordance with Section 1 hereof in the event of a partial condemnation or otherwise in the event of a casualty), together with interest, costs and fees as set forth in the preceding sentence, by withdrawals from the Reserve Fund as defined and in the manner provided for in the Indenture for withdrawals of Individual Lease Expenses as therein defined.

7. Cross Default. Trustee and Issuer hereby confirm and agree that any default by Issuer under the Lease constitutes a default by Issuer under the Bonds, Indenture, Mortgage and other documents securing the Bonds.

8. Kmart Call Option. In the event:

- (a) (i) Kmart notifies Trustee in writing, in the form of a certification pursuant to Section 3.08 of the Indenture, (x) that Issuer has defaulted, beyond any applicable grace period, under the terms of the



Lease, (y) that but for the provisions of this Agreement, such default would give rise to a right on the part of Kmart to offset the Rent under the Lease or as a consequence of such default Kmart makes a payment under this Agreement which it would not be obligated to make under the Lease, and (z) setting forth the amount of such offset or payment, or (ii) Trustee has notified Kmart that it intends to commence or has begun a foreclosure action against Issuer in connection with the Property,

(b) Kmart offers to purchase the Substitute Note by payment to Trustee of the Property Indebtedness together with any Redemption Premium allocated to the Property under the Indenture (collectively, the "Purchase Price"), and

(c) Kmart agrees to indemnify Trustee for the following:

(i) The reasonable costs and expenses of Trustee (including reasonable attorneys' fees) in performance of its obligations under this Section 8, and

(ii) Any and all loss and reasonable costs or expenses (including reasonable attorneys' fees) ("Loss") to Trustee in the performance of its obligations under this Section 8 in the event Kmart's notice and certification issued under (a) above is not made in good faith; provided however that no such indemnification is available under this subparagraph (c)(ii) in the event such Loss is a result of (x) Trustee having failed to perform its obligations under the Indenture, or (y) Trustee acting with gross negligence or willful misconduct,

Trustee shall, on a Payment Date (as defined in the Indenture), following written notice of at least thirty (30) days but not more than sixty (60) days from Kmart (unless a shorter period shall be agreed to in writing by the Trustee) ("Call Notice"), and effective upon receipt of the Purchase Price, deliver the Substitute Note (as defined in the Indenture) and assign to Kmart all of its right, title and interest in the Mortgage, Assignment, and the UCC-1 Financing Statement in connection with and covering the Property. Upon receipt of the Call Notice, the Trustee shall notify the bondholders in the same manner and time frames required in the Indenture for a redemption and, upon such notice to the bondholders, Kmart's obligation to acquire the Substitute Note shall be irrevocable.

In the event Trustee has begun a foreclosure action against Issuer in connection with the Property, and Kmart exercises its call option pursuant to this Section, Trustee agrees it will discontinue the foreclosure action unless Kmart directs by written notice to Trustee that such action be assigned to Kmart. In such event, Trustee shall deliver and assign the above-referenced documents to Kmart provided the conditions to such delivery and assignment set forth herein have been satisfied and Kmart agrees to pay the reasonable costs and expenses of Trustee (including reasonable attorneys' fees) in connection therewith.

If prior to Kmart's acquisition of the Substitute Note, Trustee has begun a foreclosure action against Issuer in connection with the Property, and the foreclosure action is part of an action to foreclose other mortgages securing the Bonds, the Trustee will attempt to sever the foreclosure action on the Property from the foreclosure on the other mortgages, and assign the foreclosure action on the Property to Kmart or discontinue the foreclosure action with respect to the Property and reinstate the Property Indebtedness evidenced by the Substitute Note, as to which Kmart shall pay the Trustee's reasonable costs and expenses (including reasonable attorneys' fees). If such severance or discontinuance cannot be accomplished, Kmart's Call Notice and its right and obligation to acquire the Substitute Note shall be void.

In the event Kmart seeks to exercise its call option pursuant to this paragraph, it shall have the right to request from Trustee and Trustee shall be required to deliver to Kmart a statement setting forth the Property Indebtedness and Redemption Premium, if any, which would be due and payable had a Redemption (as defined in the Indenture) occurred on the date of such statement.

9. Transfer to Kmart. In the event Trustee acquires Issuer's interest in the Property in a foreclosure of the Mortgage, a deed in lieu of foreclosure, or otherwise, Kmart shall assume all of Issuer's responsibilities under the Lease (including, without limitation, payment of all ground rents, payment pursuant to reciprocal easement agreements and payment of taxes and insurance), and payment by Kmart of annual minimum rental (net of all Property expenses and without offset, defense, abatement or reduction of any kind) as provided in Section 1 hereof shall be in lieu of and in full satisfaction of Kmart's obligation to pay Rent under the Lease. Upon payment in full of the Property Indebtedness pursuant to the terms of the Bonds and Indenture as herein provided (including any applicable Redemption Premium), Trustee if requested in writing by Kmart will do one or more of the following: (a) by quit claim deed transfer to Kmart or as directed in writing by Kmart all right, title and interest it may have in and to the Property or (b) assign to Kmart all of its right, title and interest under the Bonds, Indenture, Mortgage and other documents securing payment of the Bonds as they relate to the Property to the effect that Kmart will be subrogated to all rights of Trustee against Issuer, and all rights and interest if any of Trustee in and to the Property.

10. Lease Modification. Issuer and Kmart agree to execute one or more amendments to the Lease as needed solely for the purpose of incorporating the agreements provided herein, subject to the consent of Trustee which shall be given provided Trustee shall have been provided with an opinion of counsel to the effect that the amendment solely incorporates the agreements provided herein. Except for the preceding sentence and except as expressly provided in the Lease as of the date hereof, the Lease will not be terminated, subordinated, modified or amended without the written consent of Trustee and any attempted subordination, termination, modification or amendment without such consent shall be void.

11. Modification of Bonds. Issuer and Trustee agree not to modify or amend the provisions of the Indenture, Bonds, Mortgage, Assignment or other documents securing the Bonds which concern the Kmart Call Option and Reserve Fund as defined therein without Kmart's written consent and any such modification or amendment without Kmart's written consent shall be void.

12. Binding Agreement; Estoppel Letters. As to the Property, and except as otherwise provided herein, this Agreement shall remain in full force and effect for and during the continuance of the primary Lease term, or until the Property Indebtedness is paid in full, whichever shall first occur, and shall be binding upon and inure to the benefit of Kmart, Trustee and Issuer and each of their respective heirs, successors or assigns. Kmart will execute, acknowledge and deliver to Trustee promptly upon request by Trustee, but not more often than once every twelve (12) months, a certificate executed by an authorized officer of Kmart certifying (i) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, as modified, and stating the modification) and (ii) as to whether, to the best of Kmart's knowledge, information and belief, Trustee or Issuer is in default in performing any of their obligations hereunder (and, if so, specifying the nature of each such default).

13. Amendments. Except as otherwise specifically stated herein, any provision of this Agreement may be amended only by a written instrument executed by each of the parties hereto.

14. Governing Law. This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of New York.

15. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes and all of which shall be deemed collectively to be one agreement.

16. Notices. Kmart and Issuer agree that copies of any notices they send to each other under the Lease or this Agreement shall also be sent to Trustee, and Trustee agree that copies of any notices it sends the Issuer under this Agreement, the Bonds, Indenture, Mortgage and other security documents relating to the Property shall also be sent to Kmart. All notices and other communications hereunder shall be in writing and shall be sent by first-class, registered or certified mail, return receipt



requested, or delivered by hand, addressed to Kmart, Trustee and Issuer at their respective addresses first set forth above or to such other address as either of the parties shall notify the others of in writing. Notices and communications sent to Kmart should be marked "Attention: Senior Vice President, Real Estate Department."

17. Renewal Option. Kmart hereby exercises its first renewal option under the Lease subject to the right, in its sole discretion, to rescind such exercise by written notice to Issuer at any time prior to the commencement of the first renewal term in the event this Agreement is terminated prior to the commencement of the first renewal term. In the event this Agreement is terminated after commencement of the first renewal term, Kmart shall have the right, in its sole discretion, to terminate the Lease upon six (6) months' prior written notice to landlord.

18. Survival. This Agreement, and the obligations of the parties hereunder, shall survive termination of the Lease, foreclosure of the Mortgage or the acceptance of a deed in lieu of foreclosure by Trustee, and shall continue in full force and effect until terminated by the terms of this Agreement.

19. Conflict of Provisions. The parties hereby agree that to the extent of any conflict between the provisions of this Agreement and the Lease, this Agreement shall control.

20. Hazardous Material. (See Rider A)

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IN WITNESS WHEREOF, the parties have caused this Supplemental Agreement to be executed by their duly authorized representatives as of the date first set forth above.

KHART CORPORATION,  
a Michigan corporation

*David D. Skiles*  
*David D. Skiles*  
*James M. Skiles*  
*James M. Skiles*

By: *M. L. Skiles*  
M. L. Skiles  
Its: Senior Vice President

ISSUER:

FIRST BERKSHIRE BUSINESS TRUST,  
a Delaware business trust

*William H. Low, Jr.*  
*William H. Low, Jr.*  
*William H. Low, Jr.*  
*William H. Low, Jr.*

By: *William H. Low, Jr.*  
William H. Low, Jr.  
Managing Trustee

TRUSTEE:

SECURITY PACIFIC NATIONAL BANK,  
a national banking association

*Elizabeth Ross*  
*Elizabeth Ross*  
*Elizabeth Ross*  
*Elizabeth Ross*

By: *J. F. [Signature]*  
Its: Vice President

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## ACKNOWLEDGMENTS

STATE OF MICHIGAN )  
 ) SS.  
COUNTY OF OAKLAND )

The foregoing instrument was acknowledged before me this 24 day of July, 1991, by M. L. Skiles, the Senior Vice President of KMART CORPORATION, a Michigan corporation, on behalf of the corporation.

Megan A. Luyckx  
Notary Public  
Oakland County, Michigan  
My Commission Expires: \_\_\_\_\_

STATE OF New York )  
 ) SS.  
COUNTY OF New York )

MEGAN A. LUYCKX  
Notary Public, Oakland County, MI  
My Commission Expires Jan 30, 1993

The foregoing instrument was acknowledged before me this 30th day of July, 1991, by William H. Low, Jr., the Managing Trustee of FIRST BERKSHIRE BUSINESS TRUST, a Delaware business trust, on behalf of the Trust.

(Notary Seal)

Lisette Suarez  
Notary Public  
\_\_\_\_\_  
County, NY  
My Commission Expires: \_\_\_\_\_

LISSETTE SUAREZ  
NOTARY PUBLIC, State of New York  
No. 43-494/248  
Qualified in Richmond County  
Commission Expires November 11, 1992

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STATE OF New York  
 ) SS.  
COUNTY OF New York

The foregoing instrument was acknowledged before me this 31st day of July, 1991, by Joseph F. Farnese, the Vice President of SECURITY PACIFIC NATIONAL BANK, a national banking association, as Trustee, on behalf of the Trustee.

Lisette Suarez  
Notary Public  
NY County, NY  
My Commission Expires: \_\_\_\_\_

[Notary Seal]

LISSETTE SUAREZ  
NOTARY PUBLIC, State of New York  
No. 43-494424B  
Qualified in Richmond County  
Commission Expires November 14, 1992

Property of Cook County Clerk's Office

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RIDER A

Kmart represents and warrants to Trustee that, except for any conditions disclosed in the Westinghouse Environmental and Geotechnical Services, Inc. Report (Ref. No. NWW-2066) dated May 9, 1991, a copy of which has been provided by Issuer to Trustee, and except for oil, batteries and other items sold in the Kmart store in the ordinary course of business in compliance with all applicable laws, the premises demised to Kmart under the Lease does not contain any underground storage tank, asbestos or any toxic or hazardous waste or substance, including without limitation: (a) any "hazardous waste" as defined by the Resource, Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder; and (c) any substance, the presence of which on the land is prohibited or regulated by any federal, state or local law, ruling, rule or regulation similar or dissimilar to those set forth in this paragraph (collectively referred to as "Hazardous Material"). Kmart agrees that, except for oil, batteries and other items sold in the Kmart store in the ordinary course of its business in compliance with all applicable laws, it shall not cause or permit any Hazardous Material to exist on or be emitted or discharged from the demised premises during the term of the Lease.

Kmart hereby agrees to indemnify, defend and hold Trustee and its successors and assigns and mortgagees harmless from and against any and all losses, liabilities, damages, injuries, penalties, fines, costs, expenses and claims of any kind whatsoever (including attorneys' fees and costs) paid, incurred or suffered by, or asserted against, Trustee resulting from the existence of any Hazardous Material on the premises demised to Kmart or the emission or discharge of any Hazardous Material from the premises demised to Kmart during the term of the Lease.

Kmart shall notify Trustee of any notices it receives in regard to any alleged Hazardous Material on the demised premises, but Kmart's failure to so notify Trustee shall not be deemed a default under this Agreement.

Kmart's obligations to indemnify Trustee under this Section shall survive the termination of the Lease, payment of the Property Indebtedness and Bonds and termination of this Agreement.



EXHIBIT ALEGAL DESCRIPTION

A PART OF LA GRANGE GARDEN HOMES AND 59TH STREET, AS VACATED, IN THE WEST 1/2 OF SECTION 16, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

## PARCEL 1:

BEGINNING AT THE INTERSECTION OF THE WEST RIGHT OF WAY LINE OF LA GRANGE ROAD AND THE NORTH RIGHT OF WAY LINE OF 59TH STREET AS VACATED, THENCE DUE SOUTH 80.00 FEET ALONG THE LAST SAID WEST RIGHT OF WAY LINE; THENCE NORTH 89 DEGREES 45 MINUTES 22 SECONDS WEST 760.19 FEET ALONG THE SOUTH RIGHT OF WAY LINE OF 59TH STREET AS VACATED; THENCE NORTH 0 DEGREES 15 MINUTES 04 SECONDS EAST 238.01 FEET; THENCE NORTH 89 DEGREES 44 MINUTES 56 SECONDS WEST 9 FEET; THENCE NORTH 0 DEGREES 15 MINUTES 04 SECONDS EAST 62.00 FEET; THENCE SOUTH 89 DEGREES 44 MINUTES 56 SECONDS EAST 21.62 FEET; THENCE NORTH 0 DEGREES 17 MINUTES 32 SECONDS EAST 351.23 FEET TO THE SOUTH LINE OF THE NORTH 22 ACRES OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 16; THENCE SOUTH 89 DEGREES 41 MINUTES 19 SECONDS EAST 472.97 FEET ALONG LAST SAID LINE TO THE EAST LINE OF VACATED MADISON AVENUE; THENCE DUE SOUTH 570.68 FEET ALONG LAST SAID LINE; THENCE SOUTH 89 DEGREES 45 MINUTES 22 SECONDS EAST 270.50 FEET TO THE PLACE OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

## PARCEL 2:

NONEXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCEL 1 AFORESAID FOR THE PURPOSES OF INGRESS AND EGRESS; PASSAGE OF VEHICLES OVER THE PARKING AREAS, DRIVEWAYS, AISLES AND ENTRYWAYS AND SERVICE DRIVE; PARKING OF VEHICLES IN THE DESIGNATED PARKING AREAS AS SHOWN ON THE SITE PLAN; PASSAGE OF PEDESTRIANS IN PEDESTRIAN WALKWAYS, SIDEWALKS AND PARKING AREAS; THE DEPOSIT AND RETENTION OF STORM WATER ON THE AREA LABELED "RETENTION BASIN"; THE INSTALLATION, USE, OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, RELOCATION AND REMOVAL OF UTILITY FACILITIES; THE MAINTAINING OF PARTY WALLS; AND SELF-HELP IN EXERCISING ANY RIGHT CREATED BY THE AGREEMENT OR ANY RIGHT TO INSTALL, CONSTRUCT, REPAIR, MAINTAIN, RELOCATE AND REMOVE ANY AND ALL COMMON AREA IMPROVEMENTS THAT THE DEVELOPER IS REQUIRED TO CONSTRUCT, REPAIR, MAINTAIN, RELOCATE AND REMOVE UNDER THE AGREEMENT BUT FAILS OR REFUSES TO DO, AS CREATED BY GRANT OF EASEMENTS CONTAINED IN CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT DATED AS OF AUGUST 19, 1988 AND RECORDED AUGUST 26, 1988 AS DOCUMENT 88390544, BY AND BETWEEN LA GRANGE DEVELOPMENT COMPANY, AN INDIANA LIMITED PARTNERSHIP, AND KMART CORPORATION, A MICHIGAN CORPORATION, OVER THE FOLLOWING DESCRIBED PARCEL OF LAND:

A PART OF LA GRANGE GARDEN HOMES AND 59TH STREET, AS VACATED, IN THE WEST 1/2 OF SECTION 16, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE WEST RIGHT-OF-WAY LINE OF LA GRANGE ROAD AND THE NORTH RIGHT-OF-WAY LINE OF 59TH STREET AS VACATED; THENCE DUE SOUTH 80.00 FEET ALONG LAST SAID WEST RIGHT-OF-WAY LINE; THENCE NORTH 89 DEGREES 45 MINUTES 22 SECONDS WEST 760.19 FEET ALONG THE SOUTH RIGHT-OF-WAY LINE OF 59TH STREET AS VACATED FOR A PLACE OF BEGINNING; THENCE CONTINUING NORTH 89 DEGREES 45 MINUTES 22 SECONDS WEST 524.48 FEET TO THE WEST LINE OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 16 THENCE NORTH 0 DEGREES 02 MINUTES 05 SECONDS WEST 40 FEET; THENCE NORTH 89 DEGREES 45 MINUTE 22 SECONDS WEST 2.29 FEET TO THE WEST LINE OF THE EAST 1337 FEET OF THE NORTHWEST 1/4 OF SAID SECTION 16; THENCE NORTH 0 DEGREES 00 MINUTES 00 SECONDS EAST 611.88 FEET TO THE SOUTH LINE OF THE NORTH 22 ACRES OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 16; THENCE SOUTH 89 DEGREES 41 MINUTES 19 SECONDS EAST 542.55 FEET ALONG LAST SAID SOUTH LINE; THENCE SOUTH 0 DEGREES 17 MINUTES 32 SECONDS WEST 351.23 FEET; THENCE NORTH 89 DEGREES 44 MINUTES 56 SECONDS WEST 21.62 FEET; THENCE SOUTH 0 DEGREES 15 MINUTES 04 SECONDS WEST 62 FEET; THENCE SOUTH 89 DEGREES 44 MINUTES 56 EAST 9 FEET; THENCE SOUTH 0 DEGREES 15 MINUTES 04 SECONDS WEST; 238.01 FEET TO THE PLACE OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

## PARCEL 3:

GRANTS OF NON-EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCEL 1 FOR INGRESS TO AND EGRESS FROM THE COMMON AREAS AND PARKING AREAS FOR VEHICULAR AND PEDESTRIAN ACCESS, CONTAINED IN AGREEMENT MADE DECEMBER 11, 1989 BY AND BETWEEN LA GRANGE DEVELOPMENT COMPANY LIMITED PARTNERSHIP, AN INDIANA LIMITED PARTNERSHIP, K MART CORPORATION, A MICHIGAN CORPORATION AND VENTURE STORES, INC., A DELAWARE CORPORATION, RECORDED AUGUST 21, 1990 AS DOCUMENT NUMBER 90407000, OVER THE FOLLOWING DESCRIBED TRACTS OF LAND:

## TRACT 1:

THAT PART OF THE NORTH THREE QUARTERS OF LOT 11 (EXCEPT THE EAST 2 RODS OF THE NORTH 18 RODS THEREOF) IN SCHOOL TRUSTEES SUBDIVISION OF SECTION 16, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT, SAID POINT BEING 50.00 FEET WEST OF THE EAST LINE OF LOT 11 AND 33.00 FEET NORTH OF THE SOUTH LINE OF THE NORTH 3/4 OF LOT 11; THENCE WEST ALONG A LINE PARALLEL WITH AND 33 FEET NORTH OF THE SOUTH LINE OF THE NORTH 3/4 OF LOT 11 BEARING NORTH 89 DEGREES 45 MINUTES 58 SECONDS WEST, A DISTANCE OF 771.12 FEET TO A POINT; THENCE SOUTH ALONG A STRAIGHT LINE, BEARING SOUTH 00 DEGREES 02 MINUTES 05 SECONDS EAST, A DISTANCE

OF 33.00 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 3/4 OF LOT 11 AND 513.00 FEET EAST OF THE WEST LINE OF LOT 11; THENCE WEST ALONG SAID SOUTH LINE OF THE NORTH 3/4 OF LOT 11, BEARING NORTH 89 DEGREES 45 MINUTES 58 SECONDS WEST, A DISTANCE OF 351.33 FEET TO A POINT ON A LINE 161.67 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF LOT 11; THENCE NORTH ALONG A LINE 161.67 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF LOT 11, BEARING NORTH 00 DEGREES 02 MINUTES 05 SECONDS WEST, A DISTANCE OF 978.14 FEET TO A POINT ON A LINE 20 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF LOT 11; THENCE EAST ALONG A LINE 20 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF LOT 11, BEARING SOUTH 89 DEGREES 45 MINUTES 40 SECONDS EAST, A DISTANCE OF 1123.03 FEET TO A POINT ON A LINE 50.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF LOT 11; THENCE SOUTH ALONG A LINE 50.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF LOT 11, BEARING SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 945.08 FEET TO THE POINT OF BEGINNING.

## TRACT 2:

THAT PART OF THE NORTH THREE QUARTERS OF LOT 11 IN SCHOOL TRUSTEES SUBDIVISION OF SECTION 16, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT, SAID POINT BEING 50.00 WEST OF THE EAST LINE OF LOT 11 AND 33.00 FEET NORTH OF THE SOUTH LINE OF NORTH 3/4 OF LOT 11; THENCE WEST ALONG A LINE WHICH IS PARALLEL TO AND 33.00 FEET NORTH OF THE SOUTH LINE OF THE NORTH 3/4 OF LOT 11, BEARING NORTH 89 DEGREES 45 MINUTES 58 SECONDS WEST, A DISTANCE OF 819.00 FEET TO A POINT; THENCE NORTH ALONG A LINE PARALLEL WITH THE EAST LINE OF LOT 11, BEARING NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, A DISTANCE OF 100.00 FEET TO A POINT; THENCE EAST ALONG A LINE PARALLEL TO THE SOUTH LINE OF THE NORTH 3/4 OF LOT 11, BEARING SOUTH 89 DEGREES 45 MINUTES 59 SECONDS EAST, A DISTANCE OF 160.00 FEET TO A POINT; THENCE NORTH ALONG A LINE PERPENDICULAR TO THE SOUTH LINE OF THE NORTH 3/4 OF LOT 11, BEARING NORTH 00 DEGREES 14 MINUTES 02 SECONDS EAST, A DISTANCE OF 175.00 FEET TO A POINT; THENCE WEST ALONG A LINE PARALLEL WITH THE SOUTH LINE OF THE NORTH 3/4 OF LOT 11, BEARING NORTH 89 DEGREES 45 MINUTES 58 SECONDS WEST, A DISTANCE OF 15.00 FEET TO A POINT; THENCE NORTH ALONG A LINE PARALLEL TO THE EAST LINE OF LOT 11, BEARING NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, A DISTANCE OF 631.38 FEET TO A POINT; THENCE EAST ALONG A LINE PARALLEL WITH THE SOUTH LINE OF THE NORTH 3/4 OF LOT 11 BEARING SOUTH 89 DEGREES 45 MINUTES 58 SECONDS EAST, A DISTANCE OF 299.36 FEET TO A POINT; THENCE SOUTH ALONG A LINE PARALLEL TO THE EAST LINE OF LOT 11, BEARING SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 218.58 FEET TO A POINT; THENCE EAST ALONG A LINE PARALLEL WITH THE SOUTH LINE OF THE NORTH 3/4 OF LOT 11, BEARING SOUTH 89 DEGREES 45 MINUTES 58 SECONDS EAST, A DISTANCE

OF 174.00 FEET TO A POINT; THENCE NORTH ALONG A LINE PARALLEL TO THE EAST LINE OF LOT 11, BEARING NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, A DISTANCE OF 38.00 FEET TO A POINT; THENCE EAST ALONG A LINE PARALLEL TO THE SOUTH LINE OF THE NORTH 3/4 OF LOT 11, BEARING SOUTH 89 DEGREES 45 MINUTES 58 SECONDS EAST, A DISTANCE OF 200.00 FEET TO A POINT ON A LINE 50.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF LOT 11; THENCE SOUTH ALONG THE SOUTH LINE, BEARING SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 708.00 FEET TO THE POINT OF BEGINNING.

EXCEPTION THEREFROM THE FOLLOWING DESCRIBED REAL ESTATE:

BEGINNING AT A POINT, SAID POINT BEING 50.00 FEET WEST OF THE EAST LINE OF LOT 11 AND 257.08 FEET SOUTH OF THE NORTH LINE OF LOT 11; THENCE SOUTH ALONG A LINE WHICH IS PARALLEL TO AND 50.00 FEET WEST OF THE EAST LINE OF LOT 11, BEARING 00 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 135.00 FEET TO A POINT; THENCE WEST ALONG A LINE PARALLEL WITH THE SOUTH LINE OF THE NORTH THREE QUARTERS OF LOT 11, BEARING NORTH 89 DEGREES 45 MINUTES 58 SECONDS WEST, A DISTANCE OF 200.00 FEET TO A POINT; THENCE NORTH ALONG A LINE PARALLEL TO THE EAST LINE OF LOT 1, BEARING NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, A DISTANCE OF 135.00 FEET TO A POINT; THENCE EAST ALONG A LINE PARALLEL WITH THE SOUTH LINE OF THE NORTH THREE QUARTERS OF LOT 11, BEARING SOUTH 89 DEGREES 45 MINUTES 58 SECONDS EAST, A DISTANCE OF 200.00 FEET TO THE POINT OF BEGINNING.

TRACT 3:

A PART OF LA GRANGE GARDEN HOMES AND 59TH STREET AS VACATED IN THE WEST HALF OF SECTION 16, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE WEST RIGHT-OF-WAY LINE OF LA GRANGE ROAD AND THE NORTH RIGHT-OF-WAY LINE OF 59TH STREET AS VACATED; THENCE DUE SOUTH 80.00 FEET ALONG LAST SAID WEST RIGHT-OF-WAY LINE; THENCE NORTH 89 DEGREES 45 MINUTES 22 SECONDS WEST 760.19 FEET ALONG THE SOUTH RIGHT-OF-WAY LINE OF 59TH STREET AS VACATED FOR A PLACE OF BEGINNING; THENCE CONTINUING NORTH 89 DEGREES 45 MINUTES 22 SECONDS WEST 524.46 FEET TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 16; THENCE NORTH 00 DEGREES 02 MINUTES 05 SECONDS WEST 40 FEET; THENCE NORTH 89 DEGREES 45 MINUTES 22 SECONDS WEST 2.29 FEET TO THE WEST LINE OF THE EAST 1337 FEET OF THE NORTHWEST QUARTER OF SECTION 16; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST 611.88 FEET TO THE SOUTH LINE OF THE NORTH 22 ACRES OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 16; THENCE SOUTH 89 DEGREES 41 MINUTES 19 SECONDS EAST 542.55 FEET ALONG LAST SAID SOUTH LINE; THENCE SOUTH 00 DEGREES 17 MINUTES 32 SECONDS WEST 351.23 FEET; THENCE NORTH 89 DEGREES 44 MINUTES 56 SECONDS WEST 21.62 FEET; THENCE SOUTH 00 DEGREES 15 MINUTES 04 SECONDS WEST 62 FEET; THENCE SOUTH 89 DEGREES 44 MINUTES 56

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SECONDS EAST 9 FEET; THENCE SOUTH 00 DEGREES 15 MINUTES 04  
SECONDS WEST 238.01 FEET TO THE PLACE OF BEGINNING, ALL IN COOK  
COUNTY, ILLINOIS.

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COUNTRYSIDE, ILLINOIS

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recorded return to:

Zan M. Nicolli  
Dickinson, Wright, Moon,  
Van Dusen & Freeman  
525 North Woodward Avenue  
Bloomfield Hills, Michigan 48304  
(313) 646-4300



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