

# UNOFFICIAL COPY

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## ASSIGNMENT OF LEASES AND RENTS MATTESON, ILLINOIS

2007 20  
THIS ASSIGNMENT ("Assignment") made this 14th day of October, 1993 by SOMERVILLE MATTESON LIMITED PARTNERSHIP, a Delaware limited partnership, having a principal place of business c/o R D Management Corp., 810 Seventh Avenue, 28th Floor, New York, New York 10019 (hereinafter called the "Assignor" and the expression "Assignor" shall include, wherever the context permits, its successors and assigns) to HIGHLAND LENDING GROUP-11, INC., a Massachusetts corporation having a place of business at One Morningside Drive North, Westport, Connecticut 06880, (hereinafter called the "Assignee").

### W I T N E S S E T H T H A T:

1. Grant of Assignment. This ASSIGNMENT is granted pursuant to the provisions of a "Loan Agreement" dated as of even date herewith between Assignor, as "Borrower", and Assignee as "Lender". Capitalized terms used herein which are not otherwise specifically defined shall have the same meaning herein as in the Loan Agreement.

The Assignor, for good and valuable consideration, receipt and sufficiency of which hereby are acknowledged, hereby grants, transfers and assigns to the Assignee the entire lessor's interest in, to and under all leases, rental agreements and/or occupancy agreements, including but not limited to that certain Lease dated December 8, 1988 between Assignor as Landlord and Kmart Corporation as Tenant, memorandum of which is recorded with the Cook County Recorder of Deeds on December 12, 1988 as Document No. 88572550 together with all amendments and modifications thereof ("Leases") now or hereafter in existence, with respect to all or any portion of the real property located at property known as 4011 W. 211th Street, Matteson, Illinois 60441 ("Premises"). Assignor agrees that all tenants under the Leases are hereby expressly and irrevocably authorized and directed to pay any and all Rents (hereinafter defined) accruing from and after the date hereof directly to Assignee. In the event Assignor receives any Rents directly from its tenant(s) from and after the date hereof in violation of the terms of this Agreement or the Loan Agreement, Assignor shall immediately remit such Rents to Assignee to be applied in accordance with the requirements of the Loan Agreement.

Assignor is the owner of the Premises. A legal description of the Premises is annexed hereto as Exhibit "A".

TOGETHER with all rents, income and profits arising from said Leases and any renewals or extensions thereof and together with all rents, income and profits for the use and occupation of all or any portion of the Premises and from all other leases or occu

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pancy agreements with respect to the Premises or any portion thereof which may have heretofore been executed or which may be executed in the future during the term of this Assignment ("Rents").

TOGETHER with all of Assignor's interest in all guaranties of Leases.

This Assignment is a perfected present, absolute, direct and unconditional assignment and transfer of all Assignor's right, title and interest in and to the Leases and the Rents made in consideration of the Loan by Assignee to Assignor and as additional security for the repayment of the Obligations (as hereinafter defined).

2. Obligations Secured. THIS ASSIGNMENT is made for the purpose of securing the "Obligations" as that term is defined in the Loan Agreement, and shall include, without limitation, the following matters:

A. The payment and performance of all obligations set forth in a certain promissory note ("Note") dated as of even date herewith, including any extensions, renewals, replacements, modifications and amendments thereof, in the original amount of Three Million Nine Hundred Seventy-Three Thousand Seven Hundred Fifty-Three and 27/100 (\$3,973,753.27) given by the Assignor, as Maker, to the order of the Assignee;

B. The payment, performance, discharge and satisfaction of each covenant, warranty, representation, undertaking and condition to be paid, performed, satisfied and complied with by the Assignor under and pursuant to the Loan Agreement and each of the other Loan Documents referred to in, or executed in connection with, the Loan Agreement;

C. The payment of all costs, expenses, legal fees and liabilities incurred by Assignee in connection with the enforcement of any of Assignee's rights or remedies under this Assignment, the other Loan Documents, or any other instrument, agreement or document which evidences or secures any other Obligations or collateral therefor, whether now in effect or hereafter executed;

D. The payment, performance, discharge and satisfaction of every obligation of the Assignor to Assignee under and pursuant to the Mortgage Security Agreement and Fixture Financing Statement (referred to herein as the "Mortgage") of even date given to Assignee to be recorded and filed herewith;

E. The payment, performance, discharge and satisfaction of each covenant, warranty, representation, undertaking and obligation of the Assignor to the Assignee under this Assignment; and

F. The payment, performance, discharge and satisfaction of all other liabilities and obligations of the Assignor to the Assignee, whether now existing or hereafter arising, direct or

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indirect, absolute or contingent, and including without limitation each such liability and obligation of the Assignor under any of the Loan Documents and each amendment, extension, modification, replacement or recasting of any one or more of the instruments, agreements and documents referred to herein or therein or executed in connection with the transactions contemplated hereby or thereby.

3. Warranties and Representations. THE ASSIGNOR WARRANTS AND REPRESENTS that it is and shall be in the future the sole owner of the entire lessor's interest in the Leases and that no rent reserved in said Leases has been or will be in the future otherwise assigned or anticipated (except as may be provided in the Loan Agreement).

THE ASSIGNOR FURTHER WARRANTS AND REPRESENTS that as of the date hereof: (a) the Leases listed on Exhibit "B" hereto are all of the Leases or occupancy agreements affecting any or all of the Premises and are in full force and effect and true and complete copies thereof together with all amendments and modifications have been previously delivered to the Assignee; (b) no default exists on the part of any of the lessees or tenants or of Assignor as lessor in the performance on the part of any of the terms, covenants, provisions or agreements in the Leases contained; (c) Assignor knows of no condition which with the giving of notice or the passage of time or both would constitute a default on the part of any of the lessees or the Assignor under the Leases; and (d) no security deposit or advance rental payment has been made by any lessee under the Leases except as shown on Exhibit "B" or as specifically designated in the copies of the Leases previously furnished to the Assignee.

4. Covenants. THE ASSIGNOR COVENANTS with the Assignee to observe and perform all the obligations imposed upon the lessor under every such Lease and not to do or permit to be done anything to impair the security thereof; not to collect any of the rent, income and profits arising or accruing under said Leases or from the Premises in violation of Assignee's rights hereunder or under the Loan Agreement; not to execute any other assignment of lessor's interest in said Leases or assignment of Rents arising or accruing from said Leases or from the Premises; not to alter, modify or change the terms of said Leases or cancel or terminate the same or accept a surrender or assignment or subletting thereof without the prior written consent of the Assignee in each instance; not to subordinate any such Lease to any mortgage or other encumbrance or permit, consent or agree to such subordination without Assignee's prior written consent in each instance; not to convey or transfer or suffer or permit a conveyance or transfer of the premises demised by any such Lease or of any interest therein so as to effect directly or indirectly a merger of the estates and rights, or a termination or diminution of the obligations, of any lessee thereunder; not to alter, modify or change the terms of any guaranty of any Lease or cancel or terminate any such guaranty without the prior written consent of Assignee in each instance; not to consent to any

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assignment of or subleasing under any Lease, unless in accordance with its terms, without the prior written consent of the Assignee in each instance; not to enter into any future Leases without the Assignee's prior written consent in each instance (provided, that nothing herein shall be deemed to prohibit the valid exercise by Kmart of any options it may have under the Kmart Lease as approved by Assignee as of the date hereof); at the Assignee's request to assign and transfer to the Assignee any and all subsequent Leases upon all or any part of the Premises and to execute and deliver at the request of the Assignee all such further assurances and assignments in the Premises as the Assignee shall from time to time require; to promptly (but in any event within two (2) business days from Assignor's receipt or sending thereof) deliver to Assignee a copy of any notice from any tenant and any notice from Assignor to any tenant alleging a default under any Lease; to promptly (but in any event within two (2) business days from the time Assignor has actual knowledge thereof) notify Assignee if Assignor has reason to believe it will be unable to fulfill its obligations as landlord under any Lease, or if Assignor has knowledge of any set of facts which, with the giving of notice or the passage of time or both, would constitute a default on the part of either Assignor or any tenant under any Lease.

5. Further Terms, Covenants and Conditions. THIS ASSIGNMENT is made on the following terms, covenants and conditions:

(A) License to Operate. Assignee shall have the right to enter the Premises for the purpose of enforcing its interest in the Leases and the Rents, and any income and profits arising therefrom, this Assignment constituting a present, absolute assignment thereof. Assignee grants to Assignor a revocable license to operate and manage the Premises; provided, however, Assignee may revoke such license upon and during the continuation of an Event of Default (as such term is defined in the Loan Agreement); provided, further, that such license shall be deemed automatically revoked upon the occurrence of any Bankruptcy Event as that term is defined in the Loan Agreement. Assignee agrees, so long as such license remains in effect, to apply the Rents received by it in accordance with the provisions of the Loan Agreement as in effect on the date hereof, without regard to any subsequent amendment except such as shall have been consented to in writing by Assignor.

(B) After Default; Remedies. Upon or at any time after an Event of Default, including, but not limited to failure of the Assignor to pay any of the items set forth in subparagraphs (ii)-(iv) below, the Assignee, without in any way waiving such default, at its option, without notice, and without regard to waste, the adequacy of the security for the Obligations secured hereby and by the Mortgage, or solvency of the Assignor, may declare all obligations to be immediately due and payable, may revoke the license described in subsection (A) above, and may, either in person or by agent, with or without bringing any action

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or proceedings, or by a receiver appointed by a court, take possession of the Premises and have, hold, manage, lease and operate the same on such terms and for such period of time as the Assignee may deem proper and, either with or without taking possession of the Premises in its own name, demand, sue for, or otherwise collect and receive, all Rents, income and profits of the Premises not already collected by Assignee, including those past due and unpaid, with full power to make from time to time all improvements, alterations, renovations, repairs and replacements thereto or thereof as may seem proper to the Assignee, and to apply such Rents, income and profits:

(i) to payment of all reasonable fees of any receiver appointed hereunder,

(ii) to application of tenant's security deposits as required by applicable law in the state in which the Premises are located (the "State"),

(iii) to payment when due of prior or current real estate taxes or special assessments with respect to the Premises or, if the Mortgage so requires, to the periodic escrow for payment of the taxes or special assessments then due,

(iv) to payment when due of premiums for insurance of the type required by the Mortgage or, if the Mortgage so requires, to the periodic escrow for the payment of premiums then due,

(v) to payment of all expenses for normal maintenance of the Premises including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees as the Assignee may deem necessary or desirable, and all expenses of operating and maintaining the Premises, including, without being limited thereto, the cost of all improvements, alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Premises; and

(vi) any Rents remaining after application of the above items shall be applied to all sums which the Assignor is responsible to pay under the Mortgage, and the principal sum, interest and indebtedness secured hereby and by the Mortgage, and all other Obligations together with all reasonable costs and reasonable attorneys' fees, in such order of priority as to any of the items mentioned in this Paragraph 5, as the Assignee in its sole discretion may determine. Any remaining funds shall be paid to Assignor or its successors or assigns, as their interests may appear. The exercise by the Assignee of the option granted it in this Paragraph 5 and the collection of the Rents, income and profits and the application thereof as herein provided shall not be considered a waiver by the Assignee of any default under the other Loan Documents or under said Leases, or this Assignment.

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Without limiting the foregoing, the right and license granted to Assignor above to operate and manage the Premises shall, at Assignee's option, be revoked and terminated upon the occurrence of an Event of Default. After the occurrence of an Event of Default, Assignor shall have no further right to function as lessor under any of the Leases.

In any and all circumstances, the parties hereby acknowledge and explicitly express their intent that the Assignee shall have a perfected security interest in the Leases and Rents upon recordation of this Assignment and notification to any of the tenants under the Leases to pay rent directly to the Assignee.

(C) Continuing Effect; Direction to Lessees. Upon payment in full to the Assignee of the principal sum, interest, indebtedness and other Obligations secured hereby and by the Mortgage, this Assignment shall become and be void and of no effect, but the affidavit of any officer, agent, or attorney of the Assignee made in good faith showing any part of said principal, interest, indebtedness or other Obligations to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. The discharge of record of the Mortgage shall constitute a discharge of this Assignment and a release of the Assignee's interest in the Leases and Rents assigned hereby and the reassignment thereof (without recourse to the Assignee) to the Assignor and all those claiming of record by, through or under the Assignor. The Assignor hereby authorizes and directs the lessees named in said Leases or any other or future lessees or occupants of the Premises, to pay over to the Assignee all Rents, income and profits arising or accruing under said Leases or from the Premises from and after the date hereof and to continue so to do until otherwise notified by the Assignee. The Assignor further directs such lessees to pay over to the Assignee any amounts which would be owed by such lessees to Assignor as a result of a casualty if such lessees elect to self-insure as permitted under the Leases, it being understood that Assignor would be obligated to pay the proceeds of any insurance or any amounts payable by such lessees under a self-insurance program to the Assignee pursuant to the Loan Agreement.

(D) No Waiver; Concurrent Rights. Nothing contained in this Assignment and no act done or omitted by the Assignee pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by the Assignee of its rights and remedies hereunder or any one or more of the other Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by the Assignee under the terms of any of the other Loan Documents. The right of the Assignee to collect said principal sums, interest and indebtedness and to enforce any other security

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therefor held by it may be exercised by the Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

(E) No Liability. Nothing herein contained shall be construed as constituting Assignee a mortgagee-in-possession in the absence of the taking of actual possession of the Premises by Assignee. In the exercise of powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor. Without limiting the generality of the foregoing, the Assignee shall not be liable for any loss sustained by the Assignor resulting from any act or omission of the Assignee in managing the Premises after an Event of Default, unless such loss is caused by the gross negligence or willful misconduct of the Assignee. The Assignee shall not be obligated to perform or discharge, nor does the Assignee hereby undertake to perform or discharge, any obligation, duty or liability under said Leases, or under or by reason of this Assignment, and the Assignor shall, and does hereby agree to, indemnify the Assignee for, and to hold the Assignee harmless from, any and all liability, loss or damage which may or might be incurred under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against the Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said Leases; provided, however, that Assignor shall not indemnify and hold Assignee harmless from liability, loss or damage arising solely from the gross negligence or willful misconduct of the Assignee and incurred either (i) after Assignee has exercised its right to enter and take possession of the Premises pursuant to the Loan Documents and while Assignee was actually in possession of the Premises at the time such action arose or (ii) after Assignee has exercised its rights to foreclose on the Mortgage securing the Obligations. Should the Assignee incur any such liability under said Leases or under or by reason of this Assignment, or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees shall be secured hereby and by the Mortgage and by the other collateral for the Obligations and the Assignor shall reimburse the Assignee therefor immediately upon demand and upon the failure of the Assignor so to do, the Assignee may, at its option, declare all sums secured hereby immediately due and payable. It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of said Premises upon the Assignee, nor for the carrying out of any of the terms and conditions of said Leases; nor shall it operate to make the Assignee responsible or liable for any waste committed on the Premises by tenants or any other parties, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of said Premises resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein

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contained shall be construed as making or constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Premises by Assignee pursuant to the provisions of the Mortgage.

(F) Effect of Foreclosure Deed. Upon the issuance of any deed or deeds pursuant to a foreclosure of the Mortgage, all right, title and interest of the Assignor in and to the Leases shall, by virtue of this instrument and such deed or deeds, thereupon vest in and become the absolute property of the grantee or grantees in such deed or deeds without any further act or assignment by the Assignor. Assignor hereby irrevocably appoints Assignee and its successors and assigns as its agent and attorney in fact to execute all instruments of assignment for further assurance in favor of such grantee or grantees in such deed or deeds as may be necessary or desirable for such purpose.

(G) Upon Termination of Lease in Bankruptcy. In the event any lessee under any of the Leases should be the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Assignor covenants and agrees that if any of the Leases is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Assignee, in each instance, and any check in payment of damages for termination or rejection of any such Lease shall be made payable to the Assignee. Assignor hereby assigns any such payment to Assignee and further covenants and agrees that Assignor will duly endorse to the order of Assignee any such check which is made payable to Assignor, the proceeds of which shall be applied to the indebtedness secured by this Assignment. Assignor hereby irrevocably appoints Assignee and its successors and assigns as its attorney-in-fact, which power is coupled with an interest, to so endorse any such checks if Assignor does not do so.

(H) Rights Contained in Mortgage. This Assignment is intended to be supplementary to, and not in substitution for, or in derogation of, any assignment of Rents to secure the Obligations contained in the Mortgage or in any other Loan Document. In the event of any conflict between this Assignment and any of the other Loan Documents, Assignee shall have the right from time to time to determine which provisions shall govern.

(I) Notices. Any notice or communications in connection herewith shall be sufficiently given if given in the manner provided for in the Loan Agreement.

(J) Successors and Assigns. All of the rights, powers, privileges and immunities herein granted and assigned to the Assignee shall also inure to its successors and assigns, including all holders, from time to time, of the Note.

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(K) Governing Law. This Assignment and all agreements and instruments executed by Assignor in connection herewith shall be governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts, except that the laws of the State shall govern the exercise of remedies by the Assignee to the extent specified in the Loan Agreement.

(L) Limited Recourse Provisions. The liability of the Assignor and its partners (if any) with respect to the Obligations is subject to the express limitations set forth in the Loan Agreement.

(M) Severability. In case any one or more of the provisions of this Assignment of Leases and Rents, any of the Loan Documents, or any other agreement now or hereafter executed in connection with any one or more of the foregoing is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof. Each of the provisions of every such agreement, document or instrument shall be enforceable by Lender to the fullest extent now or hereafter permitted by law.

[SIGNATURES ON NEXT PAGE]

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## [SIGNATURE PAGE TO ASSIGNMENT OF LEASES AND RENTS]

IN WITNESS WHEREOF, the said Assignor executed these presents under seal the day and year first above written.

Witness:

SOMERVILLE MATTESON LIMITED  
PARTNERSHIP, a Delaware limited  
partnership

By: Somerville Matteson Corp.,  
its sole general partner

By: Michael D. Treacy  
Michael D. Treacy, Vice President

ATTEST:

By: Harold W. Schulkind  
Secretary

### COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

October 14, 1993

Then personally appeared before me the above-named Michael D. Treacy as Vice President, of Somerville Matteson Corp. and acknowledged the foregoing instrument to be the free act and deed of Somerville Matteson Corp., as general partner of Somerville Matteson Limited Partnership, for the purposes therein stated and intending to be bound thereby.

Rosa Mazzeo  
Rosa Mazzeo, Notary Public  
My Commission Expires: 1/28/94

This instrument was prepared by, and ~~after recording should be returned to:~~

Ronald S. Borod, Esquire  
Brown, Rudnick, Freed & Gesmer, P.C  
One Financial Center  
Boston, MA 02111

Return to Brown Rudnick  
First American Title  
One Financial Place - 16th Floor  
Boston, MA 02111

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COOK COUNTY CLERK'S OFFICE  
100 NORTH LAUREL STREET  
CHICAGO, ILLINOIS 60602  
TEL: (773) 399-3000  
WWW.COOKCOUNTYCLERK.COM

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## EXHIBIT "A" ANNEXED TO ASSIGNMENT OF LEASES AND RENTS

### LEGAL DESCRIPTION

#### PARCEL 1:

A TRACT OF LAND IN THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 35 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE WEST RIGHT OF WAY LINE OF GOVERNORS HIGHWAY AS DEDICATED, AND THE NORTH RIGHT OF WAY LINE OF ST. LAWRENCE AVENUE; THENCE SOUTH 89 DEGREES 46 MINUTES 13 SECONDS WEST 537.20 FEET ALONG LAST SAID NORTH LINE; THENCE NORTH 0 DEGREES 13 MINUTES 47 SECONDS WEST 79.33 FEET; THENCE NORTH 89 DEGREES 46 MINUTES 13 SECONDS EAST 45.00 FEET; THENCE NORTH 0 DEGREES 13 MINUTES 47 SECONDS WEST 253.00 FEET; THENCE NORTH 89 DEGREES 46 MINUTES 13 SECONDS EAST 79.00 FEET; THENCE NORTH 0 DEGREES 13 MINUTES 47 SECONDS WEST 352.36 FEET TO A POINT ON CURVE; THENCE EASTERLY ON A CURVE CONVEX TO THE SOUTH HAVING A RADIUS OF 406.60 FEET, AN ARC DISTANCE OF 206.65 FEET, AND A CHORD BEARING OF SOUTH 75 DEGREES 56 MINUTES 54 SECONDS EAST TO A POINT OF TANGENT; THENCE NORTH 89 DEGREES 29 MINUTES 30 SECONDS EAST 177.00 FEET TO A POINT OF CURVE; THENCE EASTERLY ON A CURVE CONVEX TO THE NORTH HAVING A RADIUS OF 50.00 FEET, AN ARC DISTANCE OF 38.77 FEET, AND A CHORD BEARING OF SOUTH 68 DEGREES 17 MINUTES 41 SECONDS EAST TO THE WEST RIGHT OF WAY LINE OF GOVERNORS HIGHWAY; THENCE SOUTH 0 DEGREES 30 MINUTES 30 SECONDS EAST 621.00 FEET TO THE PLACE OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

EASEMENT APPURTENANT TO PARCEL 1 FOR INGRESS, EGRESS, ACCESS, PARKING, DRAINAGE AND DETENTION OVER THE COMMON AREAS AS DESCRIBED AND SET FORTH IN DECLARATION OF EASEMENTS, RESTRICTIONS AND OPERATING AGREEMENTS MADE BY AND BETWEEN K MART CORPORATION AND MATTESON ASSOCIATES LIMITED PARTNERSHIP DATED APRIL 19, 1988 AND RECORDED APRIL 21, 1988 AS DOCUMENT NUMBER 89167508.

PIN 31-22-401-018 Vol. 179

Address: 4011 W. 21<sup>st</sup> St.  
Matteson, IL

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ALL INFORMATION CONTAINED  
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DATE 01/11/01 BY 60322 UC/STW

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## EXHIBIT "B" ANNEXED TO ASSIGNMENT OF LEASES AND RENTS

### LEASES PRESENTLY IN EFFECT

Subject to a lease to Kmart Corporation dated December 8, 1988, and amended by an amendment dated September 14, 1989, effective December 8, 1988. A Memorandum of Lease was recorded in Cook County on December 12, 1988 as Document No. 88572550.

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DEPT-01 RECORDINGS 143.50  
TH9999 TRAN 1416 11/08/93 09:43:00  
#0903 # \*-93-904809  
COOK COUNTY RECORDER

ARUBA:WP3: [HIGHLAND]MATTESON.AA5:9

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SERIALIZED  
INDEXED  
FILED

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PLEASE RETURN TO  
DEANN BAPTISTE  
FIRST AMERICAN TITLE INSURANCE COMPANY  
ONE FINANCIAL CENTER - 16TH FLOOR  
BOSTON, MA 02111