

## TENANT AGREEMENT

This AGREEMENT is made and entered into as of December 10, 1984 by and among NEW ENGLAND GENERAL LIFE INSURANCE COMPANY, a Massachusetts corporation ("Lender"), ASHY-POWELL PELHAM ("Landlord") and K MART CORPORATION ("Tenant").

## 1. RECITALS.

1.1 *Indenture*. Lender is the holder of a Promissory Note dated January 3, 1985 in the original principal amount of \$ 2,000,000 of Landlord, which is secured, *inter alia*, by a Mortgage and Security Agreement or Deed of Trust (the "Indenture") and an Assignment of Leases and Rents (the "Lease Assignment") covering premises more particularly described in the Indenture (the "Premises").

1.2 *Lease*. Landlord and Tenant entered into a Lease dated October 31, 1980 (the "Lease"), whereby Landlord demised to Tenant a portion of the Premises (the "Demised Premises"), as amended by First Amendment of Lease dated December 23, 1981 (referred to, together with the Lease, as the "Lease").

2. *CONSIDERATION*. The terms of the Lease constitute a material inducement to Lender's consenting thereto and entering into and performing this Agreement.

3. *SUBORDINATION OF THE LEASE*. The Lease shall be and is hereby made subject and subordinate to the Indenture.

4. *NON-DISTURBANCE*. Lender shall not, in the exercise of any right, remedy, or privilege granted by the Indenture or the Lease Assignment, or otherwise available to Lender at law or in equity, disturb Tenant's possession under the Lease so long as:

(a) Tenant is not in default under any provision of the Lease or this Agreement at the time Lender exercises any such right, remedy, or privilege; and

(b) The Lease at that time is in force and effect according to its original terms, or with such amendments or modifications as Lender shall have approved, as provided below; and

(c) Tenant thereafter continues to fully and punctually perform all of its obligations under the Lease without default thereunder; and

(d) Tenant attorns to or at the direction of Lender, as provided in Paragraph 5.

Without limitation of the foregoing, and so long as the foregoing conditions are met, Lender agrees that (i) Tenant will not be named as a party to any foreclosure or other proceeding instituted by Lender; (ii) any sale or other transfer of the Demised Premises or of the Landlord's interest in the Lease, pursuant to foreclosure or any voluntary conveyance or other proceeding in lieu of foreclosure, will be subject and subordinate to Tenant's possession under the Lease; and (iii) the Lease will continue in force and effect according to its original terms, or with such amendments as Lender shall have approved, as provided below.

5. *ATTORNMEN*T. Tenant shall attorn to Lender, to any receiver or similar official for the Demised Premises appointed at the instance and request, or with the consent, of Lender, and to any person who acquires the Demised Premises, or the Landlord's interest in the Lease, or both, pursuant to Lender's exercise of any right, remedy, or privilege granted by the Indenture, or otherwise available at law or in equity. Without limitation, Tenant shall attorn to any person or entity that acquired the Demised Premises pursuant to foreclosure of the Indenture, or by any proceeding or voluntary conveyance in lieu of such foreclosure, or from Lender, whether by sale, exchange, or otherwise.

Upon any attornment under this Paragraph 5, the Lease shall continue in full force and effect as a direct lease between Tenant and the person or entity to whom Tenant attorns, except that such person or entity shall not be:

(i) liable for any breach, act or omission of any prior landlord; or

(ii) subject to any offsets, claims or defenses which Tenant might have against any prior landlord; or

*Jack A*

This instrument was prepared by  
GUY V. MARTIN, JR.  
800 First National - Southern Natural Bldg.  
BIRMINGHAM, ALABAMA 35203

- (iii) bound by any rent or additional rent or other payment in lieu of rent which Tenant might have paid to any prior landlord more than 30 days in advance of its due date under the Lease; or
- (iv) bound by any amendment or modification of the Lease made without Lender's written consent; or
- (v) bound by any notice given by Tenant to Landlord, whether or not such notice is given pursuant to the terms of the Lease, unless a copy thereof was then also given to Lender; or
- (vi) be liable for any security deposit or other sums held by any prior landlord, unless actually received.

The person or entity to whom Tenant attorns shall be liable to Tenant under the Lease only during such person or entity's period of ownership, and such liability shall not continue or survive as to the transferor after a transfer by such person or entity of its interest in the Lease and the Demised Premises.

#### 6. REPRESENTATIONS AND WARRANTIES.

6.1 *Joint and Several.* Landlord and Tenant hereby jointly and severally represent and warrant to Lender as follows regarding the Lease:

(a) A true and correct copy of the Lease (inclusive of all riders and exhibits thereto) is attached to a counterpart of this Agreement being delivered to Lender. There are no other oral or written agreements, understandings or the like between Landlord and Tenant relating to the Demised Premises or the Lease transaction.

(b) Tenant has accepted possession of the Demised Premises, is in occupancy thereof under the Lease, and the term commenced on November 4, 1982.

(c) Under the Lease, Tenant is presently obligated to pay rent without present right of defense or offset, at the rate of \$ 26,706.67 per month. Rent is paid through and including December 31, 19 84. No rent has been paid more than 30 days in advance, and Tenant has no claim against the Landlord for any deposits or other sums.

(d) The Lease has not been modified, altered or amended in any respect.

(e) All of the improvements contemplated by the Lease have been entirely completed as required therein.

(f) The addresses for notices to be sent to Tenant and Landlord are as set forth in the Lease.

(g) Tenant has no right of first refusal, option or other right to purchase the Premises or any part thereof, including, without limitation, the Demised Premises.

6.2 *Several.* Landlord and Tenant severally represent and warrant to Lender with respect to themselves, but not with respect to the other:

(a) The execution of the Lease was duly authorized, the Lease was properly executed and is in full force and effect and is valid, binding and enforceable against Tenant and Landlord and there exists no default, nor state of facts which with notice, the passage of time, or both, could ripen into a default, on the part of either Tenant or Landlord.

(b) There has not been filed by or against nor, to the best of the knowledge and belief of the representing party, is there threatened against or contemplated by, Landlord or Tenant, a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States or of any state thereof, or any other action brought under said bankruptcy laws.

(c) There has not been any assignment, hypothecation or pledge of the Lease or rents accruing under the Lease, other than pursuant to the Indenture and the Lease Assignment. Tenant makes the representation set forth in this subparagraph only to its best knowledge and belief.



7. **RENTS.** Landlord and Tenant jointly and severally acknowledge that the Lease Assignment provides for the direct payment to Lender of all rents and other monies due and to become due to Landlord under the Lease upon the occurrence of certain conditions as set forth in the Lease Assignment without Lender's taking possession of the Demised Premises or otherwise assuming Landlord's position or any of Landlord's obligations under the Lease. Upon receipt from Lender of written notice to pay all such rents and other monies to or at the direction of Lender, Landlord authorizes and directs Tenant thereafter to make all such payments to or at the direction of Lender, releases Tenant of any and all liability to Landlord for any and all payment so made, and shall defend, indemnify and hold Tenant harmless from and against any and all claims, demands, losses, or liabilities asserted by, through, or under Landlord (except by Lender) for any and all payments so made. Upon receipt of such notice, Tenant thereafter shall pay all monies then due and becoming due from Tenant under the Lease to or at the direction of Lender, notwithstanding any provision of the Lease to the contrary. Tenant agrees that neither Lender's demanding or receiving any such payments, nor Lender's exercising any other right, remedy, privilege, power or immunity granted by the Indenture or the Lease Assignment, will operate to impose any liability upon Lender for performance of any obligation of Landlord under the Lease unless and until Lender elects otherwise in writing. Such payments shall continue until Lender directs Tenant otherwise in writing.

Tenant agrees not to pay any rent under the Lease more than 30 days in advance without Lender's consent. The provisions of this Paragraph 7 will apply from time to time throughout the term of the Lease.

8. **CURE.** If Tenant becomes entitled to terminate the Lease or offset, withhold or abate rents because of any default by Landlord, then Tenant, as a condition precedent to the exercise of any such right, shall give Lender written notice specifying Landlord's default. Lender then shall have the right, but not the obligation, to cure the specified default within the following time periods:

(a) Fifteen days after service of such notice with respect to defaults that can be cured by the payment of money;

(b) Thirty days after service of such notice with respect to any other default; unless the cure requires Lender to obtain possession of the Demised Premises, in which case such thirty day period shall not commence until Lender acquires possession, so long as Lender proceeds promptly to acquire possession of the Demised Premises with due diligence, by foreclosure of the Indenture or otherwise.

(c) Nothing contained in this Paragraph 8 shall require Lender to commence or continue any foreclosure or other proceedings, or, if Lender acquires possession of the Demised Premises, to continue such possession, if all defaults specified by Tenant in its notice are cured. Possession by a receiver, or other similar official appointed at the insistence, or with the consent, of Lender shall constitute possession by Lender for all purposes under this Paragraph 8.

9. **AMENDMENT.** Landlord and Tenant jointly and severally agree that they will not amend or modify the Lease, or waive the benefit of any of its provisions, or in any way terminate or surrender the Lease except as expressly provided in the Lease, or this Agreement, or both, without Lender's prior written approval, which will not be unreasonably withheld or delayed so long as no such proposed action of Landlord and Tenant will adversely affect the security intended to be provided by the Indenture and the Lease Assignment. The parties also mutually agree that there will be no merger of the Lease, without Lender's prior written consent, if Tenant acquires any other estate in the Demised Premises.

All amendments, modifications, substitutions, renewals, extensions, and replacements of the Lease shall be and remain subordinated as provided in Paragraph 3 above without the necessity of any further act of the parties.

10. **ESTOPPEL LETTERS.** Whenever reasonably requested by Lender, Landlord and Tenant from time to time shall severally execute and deliver to or at the direction of Lender, and without charge to Lender, one or more written certifications of all of the matters set forth in Paragraph 6, whether Tenant has exercised any renewal option or options and any other information the Lender may reasonably require to confirm the current status of the Lease, including, without limitation, a confirmation that the Lease is and remains subordinated as provided in this Agreement.

11. **CASUALTY AND EMINENT DOMAIN.** Landlord and Tenant jointly and severally agree that the Indenture permits Lender, at its option, to apply to the indebtedness from time to time secured by the Indenture any and all insurance proceeds payable with respect to any casualty loss at the Demised Premises and any and all awards or other compensation that may be payable for the condemnation of all or any portion of the Demised Premises, or any interest therein, or by way of negotiated settlement or conveyance in lieu of condemnation; and Landlord and Tenant jointly and severally consent to any such application by Lender. Notwithstanding the foregoing, Landlord and Lender agree that any and all insurance or condemnation proceeds payable with respect to Tenant's property or the interruption or relocation of Tenant's business (except for rental loss insurance proceeds) will be paid to Tenant, so long as they do not reduce the proceeds otherwise payable to Landlord or Lender, or both.

12. **NOTICES.** All notices, demands, and other communications that must or may be given or made in connection with this Agreement must be in writing and, unless receipt is expressly required, will be deemed delivered or made when mailed by registered or certified mail, return receipt requested, or by express mail, in any event with sufficient postage affixed, and addressed to the parties as follows:

|              |                                                                                                                                  |
|--------------|----------------------------------------------------------------------------------------------------------------------------------|
| TO LENDER:   | New England General Life Insurance<br>Company<br>Attn: Mortgage Department<br>501 Boylston Street<br>Boston, Massachusetts 02117 |
| TO LANDLORD: | Ashy-Powell Pelham<br>Post Office Box 1009<br>Eunice, Louisiana 70535                                                            |
| TO TENANT:   | K Mart Corporation<br>3100 West Big Beaver Road<br>Troy, Michigan 48084                                                          |

Such addresses may be changed by notice pursuant to this Paragraph 12; but notice of change of address is effective only upon receipt. Landlord and Tenant jointly and severally agree that they will furnish Lender with copies of all notices relating to the Lease. All communications to Lender shall reference "NEG Loan No. 50."

13. **SUCCESSORS AND ASSIGNS.** As used in this Agreement, the word "Tenant" shall mean Tenant and any subsequent holder or holders of an interest under the Lease, as the text may require, provided that the interest of such holder is acquired in accordance with the terms and provisions of the Lease and the word "Lender" shall mean New England Mutual Life Insurance Company or any subsequent holder or holders of the Indenture or any party acquiring title to the Demised Premises by purchase at a foreclosure sale, by deed of the Lender, or otherwise. Subject to the foregoing, this Agreement shall bind and inure to the benefit of Landlord, Tenant and Lender, their legal representatives, successors and assigns. The terms Lease, Indenture and Lease Assignment shall include any and all amendments, modifications, replacements, substitutions, extensions, renewals and supplements thereto.

14. **FURTHER ASSURANCES.** Landlord and Tenant from time to time shall execute and deliver at Lender's request all instruments that may be necessary or appropriate to evidence their agreements hereunder.

15. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

BOOK 015 PAGE 98



16. SEVERABILITY. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Agreement to any person or to particular circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

NEW ENGLAND GENERAL LIFE INSURANCE  
COMPANY

By: *Paul A. Manoff*

K MART CORPORATION

BY: *[Signature]*  
(TENANT)

ASHY-POWELL PELHAM

By: *Mitchell N. Ashy*  
(LANDLORD) MITCHELL N. ASHY, Its General Partner

By: *Thomas E. Powell*  
(LANDLORD) THOMAS E. POWELL, Its General Partner

(ACKNOWLEDGEMENTS)

STATE OF ~~ALABAMA~~ LOUISIANA

St. Landry ~~COUNTY~~ PARISH

I, Edward M. Dietz, a Notary Public in and for said County in said State, hereby certify that Mitchell N. Ashy and Thomas E. Powell, whose names as general partners of **ASHY-POWELL PELHAM**, a Louisiana limited partnership, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they as such general partners and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal, this 10th day of December, 1984.

Edward M. Dietz  
Notary Public

My Commission Expires: with life



COMMONWEALTH OF MASSACHUSETTS  
~~XXXXXXXXXXXXXXXXXXXX~~ )

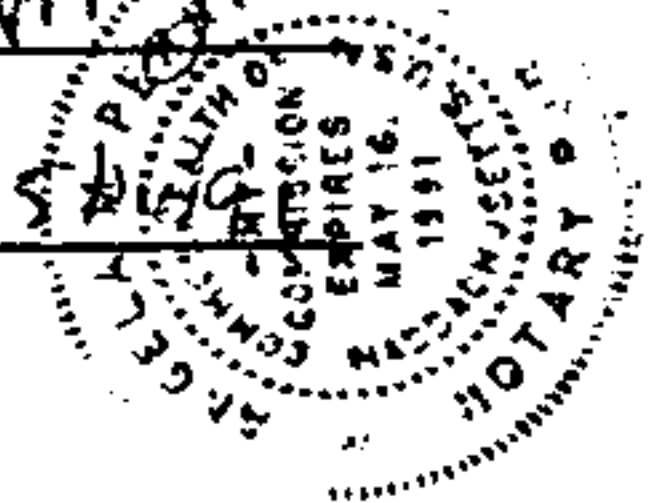
SUFFOLK COUNTY )

I, Adam M. Perry, a Notary Public in and for said County in said State, hereby certify that Charles A. Moss Jr. whose name as Vice President of **NEW ENGLAND GENERAL LIFE INSURANCE COMPANY**, a Massachusetts corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this 3<sup>rd</sup> day of January, 1984.

Adam M. Perry  
Notary Public

My Commission Expires: \_\_\_\_\_



BOOK 015 PAGE 100



Michigan  
STATE OF ALABAMA )

Oakland COUNTY )

I, Margaret T. Grant, a Notary Public in and for said County in said State, hereby certify that J. P. Johnson whose name as Vice President of K MART CORPORATION, a Michigan corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this 21st day of December, 1984.

Margaret T. Grant  
Notary Public

My Commission Expires MARGARET T. GRANT  
Notary Public, Oakland County, Mich.  
My Commission Expires May 29, 1985

BOOK 015 PAGE 101

STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

1985 JAN 17 AM 8:39

Thomas A. Shuler, Jr.  
JUDGE OF PROBATE

Rec 17.50  
Jud 2.00  
19.50