

STATE OF LOUISIANA

PARISH OF ST. LANDRY

I AGREEMENT TO TERMINATE TRUST

This Agreement to Terminate Trust made on this the 16TH day of APRIL, 1985, by and between ASHY-POWELL-PELHAM, a Louisiana Partnership in commendam, AMERICAN BANK AND TRUST COMPANY of Lafayette, Louisiana, and Kmart Corporation.

WITNESSETH:

WHEREAS, on the 20th day of October, 1982, ASHY-POWELL-PELHAM, a Louisiana Partnership in commendam, did create the "Ashy-Powell-Pelham Trust", under which American Bank And Trust Company of Lafayette, Louisiana, was designated as a Trustee, a true and correct copy of the Trust instrument creating the "Ashy-Powell-Pelham Trust" is attached hereto as Exhibit "A", and incorporated herein by reference as if fully set forth herein; and

WHEREAS, the Trust instrument creating the "Ashy-Powell-Pelham Trust" provides that the Trust may be terminated at any time by the mutual consent of the Settlor, Trustee, and Kmart Corporation; and

WHEREAS, the Trustee of the "Ashy-Powell-Pelham Trust", the Settlor of the "Ashy-Powell-Pelham Trust" and Kmart Corporation desire to terminate the "Ashy-Powell-Pelham Trust";

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE RECITALS, the parties hereto agree as follows:

1. Ashy-Powell-Pelham, a Louisiana Partnership in commendam, the Settlor of the Ashy-Powell-Pelham Trust, the American Bank And Trust Company of Lafayette, Louisiana, the Trustee of the Ashy-Powell-Pelham Trust, and Kmart Corporation hereby mutually agree and consent to the termination of the Ashy-Powell-Pelham Trust as of the date of execution of this Agreement.

2. Ashy-Powell-Pelham, Louisiana Partnership in commendam, and Kmart Corporation agree to hold harmless the American Bank And Trust Company of Lafayette, Louisiana, for its actions as Trustee of the Ashy-Powell-Pelham Trust from the date of creation of the Trust until the date of the execution of this Agreement, and the said Ashy-Powell-Pelham

WILLIAM D. SCRUGGS AND
MICHAEL L. BROWNFIELD

ATTORNEYS

204 ALABAMA AVENUE S.W.

P.O. BOX 1103

a Louisiana Partnership in commendam, and Kmart Corporation hereby ratify and confirm all actions taken by the American Bank And Trust Company of Lafayette, Louisiana, as Trustee of the Ashy-Powell-Pelham Trust during the existence of the Trust.

3. The parties hereto agree to execute all the documents and writings, if any, which may be necessary to effectively terminate the Ashy-Powell-Pelham Trust and agree to the recording of same with Governmental offices or agencies as may be appropriate.

4. The parties hereto agree that future rents due Ashy-Powell-Pelham, a Louisiana Partnership in commendam, from Kmart Corporation pursuant to the terms of a certain lease between Ashy-Powell-Pelham (previously known as Ashy-Bickham-Pelham), a Louisiana Partnership in commendam, and Kmart Corporation, a memorandum of which is recorded in Deed Book 231, Page 735 in the Office of the Judge of Probate of Shelby County, Alabama, and any and all amendments thereto, whether recorded or unrecorded, shall be paid directly to Ashy-Powell-Pelham, a Louisiana Partnership in commendam.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seal, on the day and date above first mentioned.

ASHY-POWELL-PELHAM, a Louisiana Partnership
in commendam

WITNESS:

Grant H. Freeman

BY:

Mitchell N. Ashy
MITCHELL N. ASHY,
MANAGING GENERAL PARTNER

AMERICAN BANK AND TRUST COMPANY OF
LAFAYETTE, LOUISIANA

WITNESS:

Victor D. Rainbolt

BY:

Eugene R. Cason
ITS Sr. Vice President and Trust Officer

KMART CORPORATION

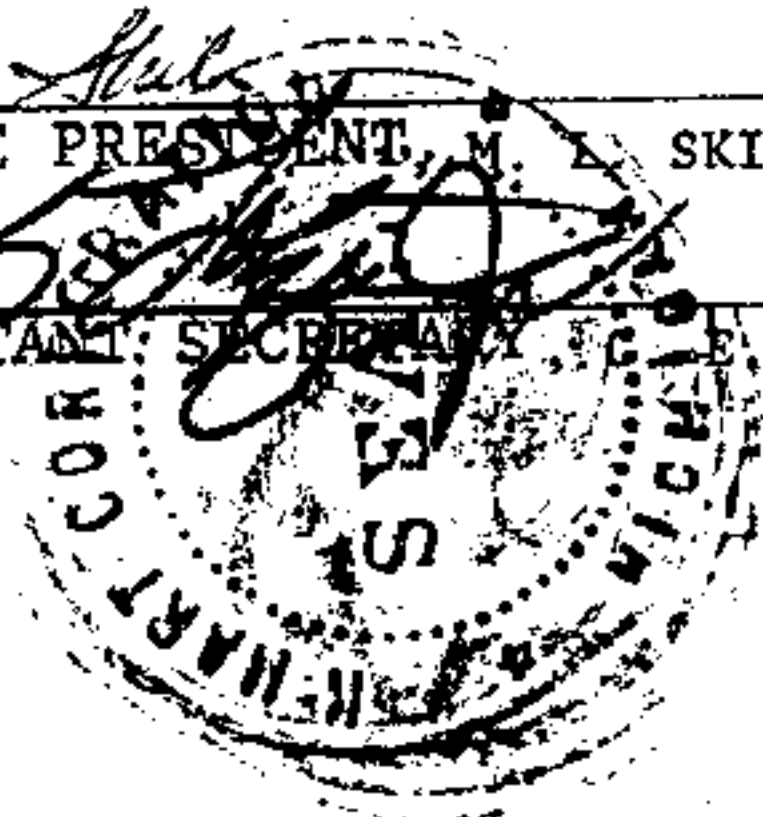
WITNESS:

BY:

M. L. Skiles
ITS VICE PRESIDENT, M. L. SKILES

ATTEST:

C. E. Lotzar, Jr.
ASSISTANT SECRETARY, C. E. LOTZAR, JR.



STATE OF LOUISIANA

PARISH OF ST. LANDRY

I, the undersigned authority, a Notary Public in and for said State of Louisiana and Parish of St. Landry hereby certify that MITCHELL N. ASHY, whose name as Managing General Partner of ASHY-POWELL-PELHAM, a Louisiana Partnership in commendam, is signed to the foregoing AGREEMENT TO TERMINATE TRUST, and who is known to me, executed the foregoing instrument voluntarily for and as the act of said Louisiana Partnership in commendam on the day the same bears date with full authority.

Given under my hand and official seal, this the 12th day of

April, 1985.

Clarence M. Duff
NOTARY PUBLIC

COMMISSION EXPIRES: 12/19/88

STATE OF LOUISIANA

PARISH OF LAFAYETTE

I, the undersigned authority, a Notary Public in and for said State of Louisiana and Parish of Lafayette hereby certify that

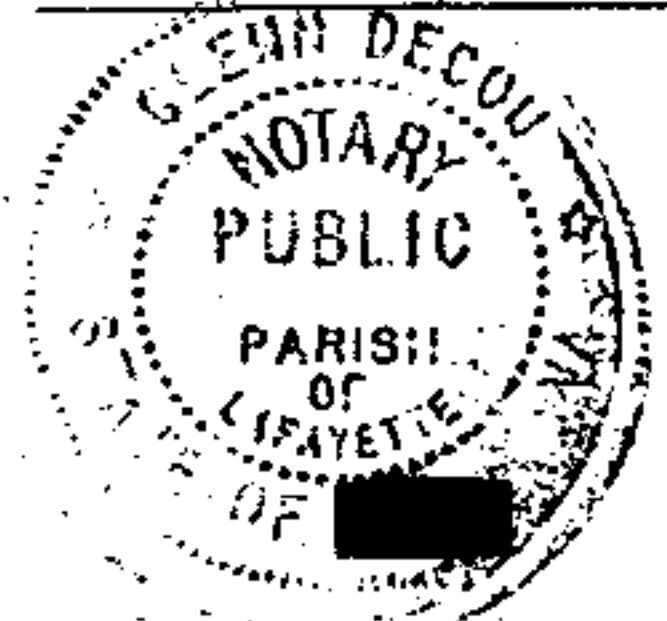
Eugene P. Cella WHOSE NAME AS Sr. Vice President and Trust Officer of American Bank And Trust Company of Lafayette, Louisiana, is signed to the foregoing AGREEMENT TO TERMINATE TRUST, and who is known to me acknowledged before me on this date, that being informed of the contents of the foregoing instrument, he, as such officer and with full authority executed the same voluntarily on the day the same bears date for and as the act of said American Bank And Trust Company of Lafayette, Louisiana.

Given under my hand and official seal, this the 16th day of

APRIL, 1985.

Henry J. Duff
NOTARY PUBLIC

COMMISSION EXPIRES: AT DEATH



STATE OF MICHIGAN
COUNTY OF OAKLAND

I do hereby certify that on this 8th day of April, 1985, before me, MRS. MARGARET T. GRANT, a Notary Public, in and for the County and State aforesaid, and duly commissioned, personally appeared M. L. Skiles and C. E. Lotzar, Jr., known to me to be the Vice President and Assistant Secretary of Kmart Corporation, who, being by me duly sworn did depose and say that they reside in Birmingham, Michigan, that they are the Vice President and Assistant Secretary of Kmart Corporation, the corporation described in and which executed the foregoing instrument, that they know the seal of said corporation, that the seal affixed to said instrument is the corporate seal of said corporation, that, on behalf of said corporation and by order of its Board of Directors, they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its and their free and voluntary act, and that they signed their names thereto by like order.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Margaret T. Grant
NOTARY PUBLIC

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



BOX 026 MAY 207

T R U S T

STATE OF LOUISIANA

PARISH OF ST. LANDRY

BE IT KNOWN that on this 20th day of October, 1982, before me, the undersigned authority, a Notary Public duly commissioned and qualified in and for the aforesaid Parish and State, and in the presence of the undersigned competent witnesses, personally came and appeared ASHY-POWELL PELHAM, (previously known as ASHY-BICKHAM PELHAM), a Louisiana partnership in commendam, appearing herein through MITCHELL N. ASHY, Managing General Partner, and domiciled in the Parish of St. Landry, Louisiana, hereinafter referred to as "Settlor", who declared that desiring to avail itself of the laws of Louisiana, particularly the Louisiana Trust Code, as now existing or hereafter amended or added to, they do by these presents grant and transfer inter vivos unto American Bank & Trust Company, Lafayette, Louisiana, herein represented by its undersigned officer, hereinafter called "Trustee", pursuant to the terms and conditions hereof and for the use and benefit of Settlor, all of the rentals becoming due or payable on or after this date by Kmart Corporation pursuant to the terms and provisions of that certain lease executed by Settlor to and in favor of Kmart Corporation, a memorandum of which is recorded in Deed Book 321, page 735 in the Office of the Judge of Probate in and for Shelby County, Alabama, and any and all amendments thereto, whether recorded or unrecorded, a copy of which lease and amendments have been delivered to Trustee, who acknowledges receipt thereof.

That this trust shall be known and designated as the "Ashy-Powell Pelham Trust".

That this trust is for a term of twenty-five (25) years commencing from the date hereof.

This transfer of rentals under the above described lease to Kmart Corporation is subordinate and inferior to the rights of the American Bank & Trust Company, Lafayette, Louisiana, under and by virtue of an assignment of the aforesaid rentals from Settlor to American Bank & Trust Company, Lafayette, Louisiana dated March 12, 1982.

That this trust agreement is created for the purposes of receiving the rental above referred to and to be paid to the Settlor by Kmart Corporation pursuant to the lease above referred to, and making the payments of the monthly installments to be due by Settlor on that certain promissory note executed by Settlor in the amount of ONE MILLION THREE HUNDRED TWELVE THOUSAND FIVE HUNDRED AND NO/100 (\$1,312,500.00) DOLLARS to the order of American Bank & Trust Company, Lafayette, Louisiana, dated March 12, 1982 which promissory note is secured by a mortgage for the aforesaid amount covering and affecting the property described in the

EXHIBIT "A"

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hereinabove referred to lease by and between Settlor and Kmart Corporation, a copy of which promissory note and mortgage have been furnished Trustee.

That Kmart Corporation is hereby directed, authorized and empowered to make the rental payments due under the aforesaid lease by and between Settlor and Kmart Corporation, as amended, directly to Ashy-Powell Pelham Trust through its Trustee and upon receipt of said rentals, Trustee is hereby authorized, empowered and directed to apply the same to the payment of the above described promissory note in accordance with the agreement of the parties thereto. After the payment of any expenses incurred by Trustee, any remaining proceeds received by Trustee shall be paid monthly directly to Settlor.

It is expressly understood and agreed that even though the trust herein created provides for the term as hereinabove set forth, this trust may be terminated at any time by the mutual consent of Settlor, Trustee and Kmart Corporation, whose mailing address is 2901 Clairmont Road, N.E., Atlanta, Georgia 30329.

That Trustee agrees to receive the rentals as hereinabove set forth and to make the payments in accordance with the terms and conditions hereof and shall not discontinue receiving the rentals or making the payments as aforesaid unless consented to by Settlor, Trustee and Kmart Corporation.

That Trustee shall be under no obligation to invest the trust fund held by it under the terms and provisions of this trust by virtue of the fact that the trust is for the purpose of receiving the rentals from Kmart Corporation and promptly distributing same in accordance with the terms and conditions hereinabove set forth.

That Trustee shall not be liable for any loss or damage resulting to the trust or the Settlor unless such loss or damage resulted from acts arising through fraud or willful negligence on its part.

That the Trustee shall keep complete and accurate accounts and shall submit to the Settlor annual statements showing the true status of the trust estate and the receipts and disbursements made.

This trust agreement shall be binding upon the parties hereto, their heirs, successors, assigns or legal representatives.

THUS DONE AND SIGNED in triplicate originals in my office in the Parish of St. Landry, Louisiana, on the day and date hereinabove first written in the presence of the undersigned competent witnesses and me, Notary, after due reading of the whole.

WITNESSES:
H. Boyd Grumbine
Anta P. Lacy

ASHY-POWELL PELHAM
BY: *Mitchell N. Ashy*
Mitchell N. Ashy, Managing General Partner, SETTLOR

AMERICAN BANK
LAFAYETTE, LOUISIANA
BY: *Richard E. Rye*
TRUSTEE

STATE OF LA. SHELBY CO.
I CERTIFY THAT
INSTRUMENT FILED

1985 MAY -6 PM 4:20
[Signature]
NOTARY PUBLIC
JUDGE OF THE CASE
Rec 15.00
Ind 1.00
16.00