



201806060107

06/06/2018 03:28 PM Pages: 1 of 13 Fees: \$308.00
Skagit County Auditor

After recording return to:

John V. Harrison, Esq.
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, New York 10006

FIRST AMENDMENT TO DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
COLLATERAL ASSIGNMENT OF PROPERTY AGREEMENTS, SECURITY AGREEMENT
AND CALL FIXTURE FILING

Grantors: Kmart of Washington LLC and Kmart Corporation

Beneficiary: JPP, LLC, in its capacity as Administrative Agent for the benefit of the Lenders from time to time under the Loan Agreement

Trustee: CHICAGO TITLE COMPANY OF WASHINGTON

Abbreviated Legal Description: Lots A AND B K-MART COMMERCIAL PARK, PTN LOT 4 SHORT PLAT NO. BU3-88 AND PTN NW NW, 08-34-04
Full legal description on Exhibit A

Tax Parcel Nos.: P105309 / 340408-2-010-0800, P105310 / 340408-2-011-0100, P83924 / 4532-000-001-0008 and P83925 / 4532-000-002-0007

Reference No. of Document Being Amended: Skagit County 201701050064

FIRST AMENDMENT TO DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
COLLATERAL ASSIGNMENT OF PROPERTY AGREEMENTS, SECURITY AGREEMENT
AND FIXTURE FILING

This First Amendment to Deed of Trust, Assignment of Rents and Leases, Collateral Assignment of Property Agreements, Security Agreement and Fixture Filing ("First Amendment") is made, and is executed as of June 4, 2018, by Kmart of Washington LLC, a Washington limited liability company, and Kmart Corporation, a Michigan corporation (collectively, together with their permitted successors and permitted assigns, "Grantor"), whose address for all purposes hereunder is 3333 Beverly Road, Hoffman Estates, Illinois 60179, and JPP, LLC, a Delaware limited liability company, in its capacity as Administrative Agent for the benefit of the Lenders from time to time under the Loan Agreement (together with all its successors and assigns, "Beneficiary"), whose address for all purposes hereunder is c/o ESL Investments, Inc., 1170 Kane Concourse, Suite 200, Bay Harbor Islands, FL 33154.

RECITALS:

WHEREAS, Grantor is the grantor under that certain Deed of Trust, Assignment of Rents and Leases, Collateral Assignment of Property Agreements, Security Agreement and Fixture Filing, dated January 3, 2017, and recorded on January 5, 2017, as document number 201701050064 in the office of the Skagit County Auditor, granted by Grantor to Chicago Title Company of Washington as trustee for the benefit of Beneficiary (as amended hereby, and as may be further amended from time to time, the "Deed of Trust");

WHEREAS, JPP, LLC, a Delaware limited liability company ("JPP"), and JPP II, LLC, a Delaware limited liability company ("JPP II"), made a loan (the "Original Loan") in the original aggregate principal amount of \$500,000,000 to Grantor and the other borrowers thereto, pursuant to that certain Loan Agreement, dated as of January 3, 2017 (as amended and restated pursuant to that certain Amended and Restated Loan Agreement, dated as of October 4, 2017, as further amended and restated pursuant to that certain Second Amended and Restated Loan Agreement, dated as of October 18, 2017, as further amended pursuant to that certain Second Amendment to Second Amended and Restated Loan Agreement, dated as of October 25, 2017, and as further amended pursuant to that certain Second Amendment to Second Amended and Restated Loan Agreement, dated as of March 8, 2018, the "Second A&R Loan Agreement"), by and between JPP, JPP II, Grantor and the other borrowers thereto, which is represented and evidenced by certain promissory notes that as of the date hereof have an aggregate original maximum principal amount of \$592,553,156 (collectively, together with any and all renewals, amendments, modifications, consolidations and extensions thereof, "Original Note");

WHEREAS, Beneficiary, the other Lenders, Grantor and the other borrowers thereto entered into that certain Third Amended and Restated Loan Agreement, dated as of June 4, 2018 (as the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement"), pursuant to which the Second A&R Loan Agreement was amended to provide for, among other things, an additional advance of

\$186,527,682 resulting in a total principal amount outstanding, as of the date hereof and following prior repayments of the Original Loan, of \$779,080,838; and

WHEREAS, the existing Original Note is not being repaid and Beneficiary hereby reserves the priority of the Deed of Trust.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Beneficiary, on behalf of the Lenders, hereby amend the Deed of Trust as follows:

Section 1. Amendment. The Deed of Trust is hereby amended as follows:

(a) The defined term "Beneficiary", as defined in the preamble to the Deed of Trust, is hereby deleted in its entirety and replaced with the following:

"JPP, LLC, a Delaware limited liability company, in its capacity as Administrative Agent for the benefit of the Lenders from time to time under the Loan Agreement (together with all its successors and assigns, "Beneficiary")."

(b) The defined term "Loan Agreement" is hereby deleted in its entirety and replaced with the following:

"Loan Agreement": The Third Amended and Restated Loan Agreement, dated as of June 4, 2018, by and between Beneficiary, as lender, the other Lenders party thereto, as lenders, and Borrower, as borrower, as the same may be replaced, amended, supplemented, extended or otherwise modified from time to time.

(c) The defined term "Loan Documents" is hereby deleted in its entirety and replaced with the following:

"Loan Documents": The (1) Loan Agreement, (2) the Notes (as defined in the Loan Agreement), (3) this Deed of Trust and the other mortgages and deeds of trust executed by Borrower pursuant to the Loan Agreement, (4) all other documents now or hereafter executed by Grantor or any other person or entity to evidence or secure the payment of the Indebtedness, and (5) all modifications, restatements, extensions, consolidations, renewals and replacements of the foregoing.

Section 2. Acknowledgement. JPP II hereby acknowledges and agrees that (a) the definition of "Beneficiary" is amended as set forth in Section 1(a) of this First Amendment; (b) JPP and JPP II (collectively, together with all of their successors and assigns) is no longer the "Beneficiary" under the Deed of Trust; and that (c) as of and pursuant to the Loan Agreement, JPP is the Administrative Agent for the benefit of the Lenders (including, as of the date hereof, JPP II) from time to time under the Loan Agreement.

Section 3. Miscellaneous.

(a) Capitalized terms used in this First Amendment and not otherwise defined herein shall have the meanings ascribed thereto in the Deed of Trust.

(b) Except as expressly amended by this First Amendment, the Deed of Trust remains in full force and effect in accordance with its terms, and is hereby in all respects ratified and confirmed.


(c) This First Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument.

(d) The recitals hereto are incorporated herein by this reference.

[No further text on this page; Signature page follows]

Grantor
BENEFICIARY:

KMART CORPORATION,
a Michigan corporation

By: 
Name: Robert A. Riecker
Title: Chief Financial Officer

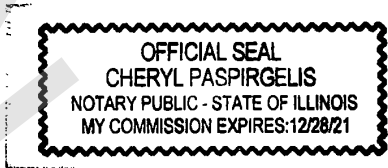
ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On the 3rd day of May in the year 2018, before me, the undersigned, a Notary Public in and for said state, personally appeared Robert A. Riecker, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the person(s), or the entity, in its capacity(ies) above noted, upon behalf of which the person(s) acted, executed the instrument.

Signature: *Cheryl Paspigelis*
Name: Cheryl Paspigelis

Official Seal



EXECUTED as of the date first above written.

GRANTOR:

KMART OF WASHINGTON LLC,
a Washington limited liability company

By: Kmart Corporation, a Michigan corporation,
its member

By: 

Name: Robert A. Riecker
Title: Chief Financial Officer

ACKNOWLEDGMENT

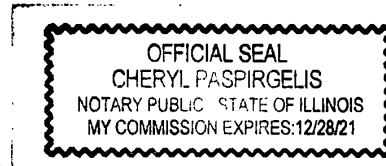
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On the 3rd day of May in the year 2018, before me, the undersigned, a Notary Public in and for said state, personally appeared Robert A. Riecker, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the person(s), or the entity, in its capacity(ies) above noted, upon behalf of which the person(s) acted, executed the instrument.

Signature:

Cheryl Paspirgelis
Name: Cheryl Paspirgelis

Official Seal



BENEFICIARY:

JPP, LLC,
a Delaware limited liability company

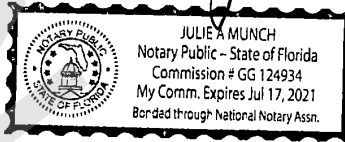
By: 
Name: Harold Talisman
Title: Authorized Signatory

ACKNOWLEDGMENT

STATE OF FLORIDA)
COUNTY OF MIAMI DADE) SS.

On the 11 day of MAY in the year 2018, before me, the undersigned, a Notary Public in and for said state, personally appeared Harold Talisman, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the person(s), or the entity, in its capacity(ies) above noted, upon behalf of which the person(s) acted, executed the instrument.

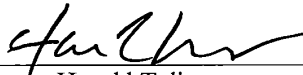
Signature: Julie A Munch
Name:



Official Seal

**AS TO SECTION 2 OF THIS FIRST
AMENDMENT, ACKNOWLEDGED AND
AGREED BY:**

JPP II, LLC,
a Delaware limited liability company

By: 
Name: Harold Talisman
Title: Authorized Signatory

ACKNOWLEDGMENT

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE) SS.

On the 11 day of May in the year 2018, before me, the undersigned, a Notary Public in and for said state, personally appeared Harold Talisman, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the person(s), or the entity, in its capacity(ies) above noted, upon behalf of which the person(s) acted, executed the instrument.

Signature: Julie A Munch
Name:

Official Seal

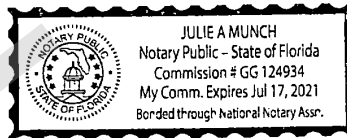


EXHIBIT A**LEGAL DESCRIPTION**

For APN/Parcel ID(s): P105309 / 340408-2-010-0800, P105310 / 340408-2-011-0100, P83924 / 4532-000-001-0008 and P83925 / 4532-000-002-0007

PARCEL A:

Tract A, PLAT OF K-MART COMMERCIAL PARK, as per plat recorded in Volume 14 of Plats, pages 126 and 127, records of Skagit County, Washington;

EXCEPT that portion thereof conveyed to the City of Burlington for Pease Road by deed recorded February 18, 1994 under Auditor's File No. 9402180068, records of Skagit County, Washington.

Situate in Skagit County, Washington.

PARCEL B:

Tract B, PLAT OF K-MART COMMERCIAL PARK as per plat recorded in Volume 14 of Plats, pages 126 and 127, records of Skagit County, Washington.

Situate in Skagit County, Washington.

PARCEL C:

The North 130 feet of the following described tract:

The South 400 feet of the East 200 feet of the West 500 feet of that portion of the Northwest Quarter of the Northwest Quarter of Section 8, Township 34 North, Range 4 East of the Willamette Meridian, lying East of the East margin of Old State Highway 99, now designated as Burlington Boulevard. (As said road existed prior to August 25, 1996.)

Situate in Skagit County., Washington

PARCEL D:

That portion of Lot 4 of Short Plat BU3-88 within the Northwest Quarter of the Northwest Quarter, as recorded in Book 8 of Short Plats at page 80, records of Skagit County, Washington, lying West of the East line of Lots 2 and 3 of said Short Plat BU3-88 and said East lines produces.

Situate in Skagit County, Washington