

After recording return to:

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



**201810090110**

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Skagit County Auditor

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**ACCOMMODATION RECORDING**

620036447-M

(SPACE ABOVE THE LINE IS FOR RECORDER'S USE)

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

GRANTOR: Kmart of Washington LLC  
Kmart Corporation

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

LEGAL DESCRIPTION: *Chicago Title Company*  
Lots A and B, K-Mart Commercial Park,  
Ptn. lot 4 Short Plat No. BU3-88 and ptn. NW NW, 08-34-04

ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NUMBERS:  
P105309 / 340408-2-010-0800, P105310 / 340408-2-011-0100  
P83924 / 4532-000-001-0008 and P83925 / 4532-000-002-0007

REFERENCE NOS. OF DOCUMENTS AMENDED:  
Skagit County Nos. 201701050064 and 201806060107

This SECOND AMENDMENT TO DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, COLLATERAL ASSIGNMENT OF PROPERTY AGREEMENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Second Amendment") is made, and is executed as of September 12<sup>th</sup>, 2018, by KMART OF WASHINGTON LLC, a Washington limited liability company, and KMART CORPORATION, a Michigan corporation, (individually and together, together with their permitted successors and permitted assigns, "Grantor" or "Grantors"), each Grantor having an address for all purposes hereunder at 3333 Beverly Road, Hoffman Estates, Illinois 60179, for the benefit of 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, as beneficiary (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:

Grantors are the grantors under the 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, (the "Original Deed of Trust") granted by Grantors to Chicago Title Company of Washington as trustee for the benefit of Beneficiary, as amended by the First Amendment to Deed of Trust, Assignment of Rents and Leases, Collateral Assignment of Property Agreements, Security Agreement and Fixture Filing, dated June 4, 2018, and recorded on June 6, 2018, as document number 201806060107 in the office of the Skagit County Auditor, granted by Grantors to Chicago Title Company of Washington as trustee for the benefit of Beneficiary (the "First Amendment", and together with the Original Deed of Trust, the "Prior Deed of Trust", and together with this Second Amendment, and as may be further amended from time to time, the "Deed of Trust").

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 the Amended and Restated Loan Agreement, dated as of October 4, 2017, and as further amended and restated pursuant to the 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 thereafter had an aggregate original maximum principal amount of \$592,553,156 (collectively, together with any and all renewals, amendments, modifications, consolidations and extensions thereof, the "Original Note").

Beneficiary, the other Lenders, Grantor and the other borrowers thereto entered into the Third Amended and Restated Loan Agreement, dated as of June 4, 2018, (the "Third A&R Loan Agreement"), pursuant to which the Second A&R Loan Agreement was amended to provide for, among other things, an additional advance of \$186,527,682.14 resulting in a total principal amount outstanding, as of the date thereof and following prior repayments of the Original Loan, of \$779,080,837.68.

Beneficiary, the other Lenders, Grantor and the other borrowers thereto entered into the First Amendment to Third Amended and Restated Loan Agreement, dated as of September 12, 2018 (the "First Amendment to Third A&R Loan Agreement"; together with the Third A&R Loan Agreement as the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement"), pursuant to which the Third A&R Loan Agreement was amended to provide for, among other things, an additional advance of

\$75,000,000.00 resulting in a total principal amount outstanding, as of the date hereof and following prior repayments of the Original Loan, of \$831,428,723.60.

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

Capitalized terms used in this Second Amendment and not otherwise defined herein shall have the meanings ascribed thereto in the Prior Deed of Trust.

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

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

- (a) As of the date hereof, the total principal amount outstanding pursuant to the Loan Documents is \$831,428,723.60.
- (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 amended by the First Amendment to Third Amended and Restated Loan Agreement, dated as of September 12, 2018, as the same may be replaced, amended, supplemented, extended or otherwise modified from time to time.

Section 2. General Terms.

- (a) Except as expressly amended by this Second Amendment, the Prior Deed of Trust remains in full force and effect in accordance with its terms, and is hereby in all respects ratified and confirmed.
- (b) This Second 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.
- (c) The recitals hereto are incorporated herein by this reference.

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

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

*[Signature Pages Continue to the Next Page]*

STATE OF Illinois )  
COUNTY OF Cook ) SS.

On the 27 day of Sept 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



"Grantor"

KMART CORPORATION,  
a Michigan corporation

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

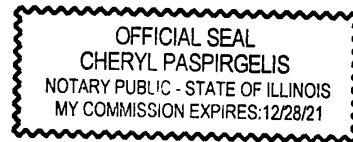
STATE OF Illinois )  
 ) SS.  
COUNTY OF Cook )

On the 27 day of Sept 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:

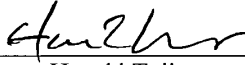
Cheryl Paspigelis  
Name: CHERYL PASPIRGELIS

Official Seal



**BENEFICIARY:**

**JPP, LLC,**  
a Delaware limited liability company

By:   
Name: Harold Talisman  
Title: Authorized Signatory



## ACKNOWLEDGMENT

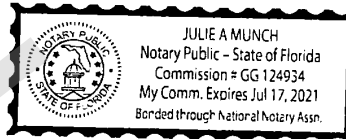
STATE OF FLORIDA )  
COUNTY OF MIAMI DADÉ ) SS.

On the 2 day of SEP 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