

NON-INVASIVE INSPECTION AGREEMENT

THIS NON-INVASIVE INSPECTION AGREEMENT (this "**Agreement**") is made and entered into as of this ____ day of _____, 2014, by and among **CITY OF MINNEAPOLIS**, a Minnesota municipal corporation ("**Investigating Party**"), **LAWRENCE KADISH**, an individual, as mortgagee and agent for all owners and ground lessor ("**Ground Lessor**"), **TROY COOLIDGE NO. 42 LLC**, a Michigan limited liability company ("**Ground Lessee/Sublandlord**") and **KMART CORPORATION**, a Michigan corporation ("**Occupant/Subtenant**") (collectively, Investigating Party, Ground Lessee/Sublandlord, Occupant/Subtenant, and Ground Lessor are referred to as the "**Parties**") in connection with site investigation and site assessment work to be performed on the property occupied by Occupant/Subtenant and located at 10 West Lake Street, Minneapolis, Minnesota 55408 (the "**Property**"), as more particularly shown on **Exhibit "A"** attached hereto and made a part hereof.

RECITALS:

A. Ground Lessor leases the Property to Ground Lessee/Sublandlord pursuant to that certain lease dated February 23, 1978, as amended and assigned (the "**Ground Lease**") and Ground Lessee/Sublandlord leases the Property to Occupant/Subtenant pursuant to that certain lease dated June 4, 1976, as amended and assigned ("**Lease**");

B. The Investigating Party desires to inspect the Property for appraisal purposes; and

C. The Investigating Party acknowledges receipt from Occupant/Subtenant of the Asbestos Inspection Survey dated June 21, 2004, prepared by Park Environmental Consulting, Inc. for or on behalf of Occupant/Subtenant (the "**Asbestos Survey**").

D. The Asbestos Survey has been provided in lieu of the Investigating Party conducting any additional or further asbestos testing.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Investigating Party and Occupant/Subtenant agree as follows:

1. Occupant/Subtenant agrees to cooperate with and permit the Investigating Party and its agents, consultants and contractors to have reasonable access to the Property at reasonable times and upon reasonable prior notice at no cost to Ground Lessee/Sublandlord and Occupant/Subtenant or their agents, consultants and contractors.
2. The scope of the site investigation and site assessment work to be performed at the Property shall be limited to the work plan attached hereto as **Exhibit "B"** (the "**Site Assessment Work**"). The Investigating Party shall not perform tests, work

or investigations not included in scope of the Site Assessment Work without the prior written consent of Ground Lessee/Sublandlord and Occupant/Subtenant. In the event that the Investigating Party engages in activity outside of or beyond the scope of the Site Assessment Work (“Unauthorized Activity”), the Parties agree that it would be difficult to ascertain the extent of damages caused to Occupant/Subtenant, and accordingly the Parties agree Occupant/Subtenant shall be entitled to a one-time liquidated damages payment of Five Thousand and 00/100 Dollars (\$5,000.00) from Investigating Party for any Unauthorized Activity conducted beyond the Site Assessment Work scope. The Parties agree that this liquidated damages payment for Unauthorized Activity is in addition to, and does not limit in any manner whatsoever, any other damages, remedy or relief that otherwise might be available to the Parties herein.

3. This Agreement shall terminate on the earlier of (a) November 30, 2014; (b) immediately, on breach by Investigating Party of any covenant of this Agreement; or (c) upon thirty (30) days’ prior written notice from Ground Lessee/Sublandlord, Occupant/Subtenant or Ground Lessor to Investigating Party, in which each such event the Investigating Party shall promptly restore the Property as provided in Section 9 of this Agreement.
4. The Investigating Party agrees to provide Occupant/Subtenant with all test results and reports, including all correspondence to or from any state or federal regulator, prepared in connection with the Site Assessment Work. The Investigating Party shall *not* provide Ground Lessor with the test results and reports, including all correspondence and draft reports prepared in connection with the Site Assessment Work unless Ground Lessor requests same in writing.
5. The Investigating Party agrees to treat the results of the appraisals as nonpublic data consistent with the Minnesota Government Data Practices Act (the “Act”), and any Site Assessment Work or data provided by the Parties pursuant thereto shall be treated in accordance with the Act. The Investigating Party agrees that it will require any party performing any portion of the Site Assessment Work to agree in writing to comply with the terms of this Section 5.
6. The Investigating Party agrees to defend, protect, indemnify and hold harmless Ground Lessor, Ground Lessee/Sublandlord and Occupant/Subtenant, their officers, directors, members, partners, attorneys, employees, agents, invitees, representatives, servants, insurers, heirs, executors, administrators, predecessors, successors and assigns, and related or associated companies, parents, subsidiaries, affiliated entities, divisions or enterprises, from any and all loss, liability, damage, cost and expense, including reasonable attorney’s fees, penalties or suits, (i) for personal injury, bodily injury, tort, contract or property damage arising out of the negligence or willful misconduct of the Investigating Party or its contractors in performing the Site Assessment Work or any other work performed pursuant to this Agreement; and (ii) for mechanic’s liens and claims arising out of the Site

Assessment Work. This indemnity shall survive the termination of this Agreement.

7. The Investigating Party shall cause the Investigating Party's contractor(s) performing the Site Assessment Work to maintain, at the contractor(s)' sole cost and expense, the following policies of insurance procured from insurance companies rated "A-VII" or better by the current edition of Bests' Insurance Reports published by the A.M. Best Company:

- (a) Workers' Compensation Insurance providing statutory benefits and limits which shall fully comply with all state and federal requirements applying to this insurance in the state where the property is located with a waiver of subrogation in favor of Ground Lessee/Sublandlord, Occupant/Subtenant and Ground Lessor, and employer's liability insurance with limits of not less than One Hundred Thousand and 00/100 Dollars (\$100,000.00) per accident or disease and Five Hundred Thousand and 00/100 Dollars (\$500,000.00) aggregate by disease.
- (b) Motor Vehicle Liability Insurance with coverage for all owned, non-owned and hired vehicles with combined single limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.
- (c) Commercial General Liability Insurance including, but not limited to, coverage for products/completed operations, premises/operations, contractual and personal/advertising injury liabilities with combined single limits of not less than Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence for bodily injury and property damage naming Ground Lessee/Sublandlord, Occupant/Subtenant and Ground Lessor as additional insureds.

The Investigating Party warrants that, in the event that it retains a contractor to perform any Site Assessment Work, the contractor will maintain insurance as set forth above. The Investigating Party further agrees to defend, protect, indemnify and hold harmless Ground Lessee, Occupant/Subtenant and Ground Lessor, their officers, directors, members, partners, attorneys, employees, agents, invitees, representatives, servants, insurers, heirs, executors, administrators, predecessors, successors and assigns, and related or associated companies, parents, subsidiaries, affiliated entities, divisions or enterprises, from any and all loss, liability, damage, cost and expense, including reasonable attorney's fees, penalties or suits, for personal injury, bodily injury, tort, contract or property damage and mechanic's liens and claims, suffered by Ground Lessee/Sublandlord, Occupant/Subtenant and Ground Lessor as a result of the Investigating Party's breach of this warranty. The Investigating Party shall not enter into the Property or commence any portion of the Site Assessment Work prior to delivering to Ground Lessee/Sublandlord,

Occupant/Subtenant and Ground Lessor an insurance certificate evidencing that it has the foregoing insurance.

8. The Investigating Party agrees that the Site Assessment Work shall be done in accordance with any and all applicable laws, ordinances, statutes, governmental regulations and recorded restrictions on the Property.
9. At the conclusion of the Site Assessment Work, the Investigating Party agrees to promptly repair any damage to the Property and to restore the Property to the same condition that it was found prior to the commencement of the Site Assessment Work, all at the sole cost and expense of the Investigating Party.
10. This Agreement shall be governed by and construed in accordance with the laws of the state in which the Property is located.
11. By executing this Agreement, the Parties acknowledge that they have had adequate time to reflect upon, consider and consult with legal counsel concerning the terms of this Agreement, and execute the same voluntarily and free from improper influence or duress.
12. The Investigating Party agrees that the Site Assessment Work will be coordinated with Occupant/Subtenant's local store manager. The Investigating Party agrees to conduct the Site Assessment Work in such a way as to minimize interference with the conduct of Occupant/Subtenant's business on the Property.
13. Ground Lessor and Ground Lessee/Sublandlord each hereby consent to this Agreement and performance of Site Assessment Work on the Property.
14. All notices and demands required hereunder shall be in writing and shall be deemed given when personally delivered, electronically delivered with receipt acknowledged, or when mailed by overnight, express, certified or registered mail with return receipt signed, postage paid, addressed to the following Parties:

Ground Lessor: Lawrence Kadish
135 Jericho Turnpike
Old Westbury, NY 11568

With copy to: Thomas M. Tepe, Esq.
Keating Muething & Klekamp PLL
One East Fourth Street, Suite 1400
Cincinnati, OH 45202

Investigating Party: City of Minneapolis
Department of Community Planning
And Economic Development
105 Fifth Av S Suite 200
Minneapolis, MN 55401

Attn.: David Frank, Director of Transit Oriented Development

***Occupant/
Subtenant:***

Kmart Corporation
c/o 3333 Beverly Road
Dept. 824RE
Hoffman Estates, IL 60179
Attn: Vice President-Real Estate

With copy to:

Kmart Corporation
c/o 3333 Beverly Road
Dept. 824RE
Hoffman Estates, IL 60179
Attn: Associate General Counsel-Real Estate

***Ground Lessee/
Sublandlord:***

Troy Coolidge No. 42, LLC
c/o 3333 Beverly Road
Dept. 824RE
Hoffman Estates, IL 60179
Attn: Vice President-Real Estate

With copy to:

Troy Coolidge No. 42, LLC
c/o 3333 Beverly Road
Dept. 824RE
Hoffman Estates, IL 60179
Attn: Associate General Counsel-Real Estate

15. This Agreement contains the entire understanding and agreement among the Parties and supersedes all prior understandings and agreements between the Parties whether oral or written. This Agreement may be modified only by a writing signed by all Parties. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one in the same instrument. The Parties shall accept facsimile or electronic signatures to this Agreement.
16. The Investigating Party acknowledges receipt of the Asbestos Inspection Survey dated June 21, 2004, prepared by Parks Environmental Consulting, Inc. Accordingly, the Investigating Party will not be conducting any further asbestos inspection, sampling or survey.

[Remainder of Page Intentionally Left Blank; Signature Page to Follow.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above stated.

Approved as to form:

Assistant City Attorney

Department head approval:

Deputy Director, CPED

INVESTIGATING PARTY:

CITY OF MINNEAPOLIS

By: _____
Name: _____
Title: _____

OCCUPANT/SUBTENANT:

KMART CORPORATION, a
Michigan corporation

By: _____
Name: _____
Title: _____

GROUND LESSOR:

Lawrence Kadish

GROUND LESSEE
/SUBLANDLORD:

TROY COOLIDGE NO. 42, LLC,
a Michigan limited liability company

By: _____
Name: _____
Title: _____

Exhibits

- A – Description of the Property
- B – Site Assessment Work

Exhibit "A"

to Non-Invasive Inspection Agreement

Description of the Property – Site Plan

Exhibit "B"

to Non-Invasive Inspection Agreement

Site Assessment Work

The Investigating Party proposes to:

Fee Simple Estate, Leased Fee Interest and/or Leasehold Interest Appraisal Report
Trade Fixtures and Personal Property Appraisal Report
Phase I Environmental Site Assessment

No invasive testing, including but not limited to, borings, any Phase II Environmental Assessment or asbestos sampling, shall be performed at the Property.