

## SETTLEMENT AGREEMENT

Borders, Inc. (“**Borders**”) and HarrisPort Associates (“**Landlord**”) (collectively, the “**Parties**,” and individually, a “**Party**”) enter into this Settlement Agreement as of the last date it was executed (the “**Execution Date**”).

### **RECITALS**

A. On February 16, 2011 (the “**Petition Date**”), Borders and certain of its affiliates (collectively, the “**Debtors**”) each filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Court**”), jointly administered under Case No. 11-10614 (MG).

B. The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

C. During the period of time that Borders was a wholly owned subsidiary of K-Mart Corporation (“**K-Mart**”), K-Mart entered into a series of agreements with developers and their respective lenders designed to decrease financing costs to develop locations for use by certain of Kmart’s wholly-owned retail operator subsidiaries, including Borders, as retail stores and (in the instant case) as a distribution center, and correspondingly decrease the cost of rent to such wholly-owned retail operator subsidiaries, including Borders, for those locations. One such location is the Borders distribution center (warehouse) (the “**Middletown Distribution Center**”) located at 1981 Fulling Mill Road, Middletown, Pennsylvania (the “**Middletown Property**”).

D. Landlord, as the developer of the Middletown Distribution Center, financed the transaction through a mortgage loan (the “**Loan**”) advanced by National Tenant Finance Corporation (the “**Lender**”) pursuant to a Loan Agreement dated as of November 10, 1994

(collectively, at times the “**Loan Agreement**”) and evidenced by two Promissory Notes, each dated as of November 10, 1994, one in the original principal balance of \$2,928,000 (which has been fully amortized and satisfied), and the second in the original principal balance of \$2,335,000 (the “**Mortgage Note**”). The Mortgage Note is secured by, among other things, a Deed of Trust dated as of November 10, 1994 (the “**Mortgage**”) encumbering the Middletown Property. To further induce Lender to enter into the Loan Agreement, K-Mart and Borders executed a Note Put Agreement dated as of November 10, 1994 (“**Note Put Agreement**”) which required Borders to purchase the Mortgage Note upon the occurrence of certain “Triggering Events” under the Note Put Agreement.

E. As part of this development transaction, Borders entered into a Lease dated as of November 10, 1994 (the “**Middletown Lease**”) with Landlord pursuant to which Borders leases the Middletown Property.

F. The Middletown Lease has an initial term of twenty (20) years, expiring on November 9, 2014. In addition, there is one option to extend the term an additional five (5) years through November 9, 2019.

G. The bankruptcy filing of K-Mart constituted a Triggering Event under the Note Put Agreement and Borders was required to purchase both Promissory Notes, including the Mortgage Note, in March, 2003. Thereafter, consistent with the terms of the Middletown Lease and the Loan Agreement, Borders, as tenant, paid rent due Landlord via a setoff or a credit against the debt service due to it by Landlord under the Mortgage Note.

H. The Mortgage Note has a current principal amortized balance of \$1,953,000, and including accrued but not yet due and payable principal, a current principal amortized balance of \$ 1,672,333.36 (as of June 30, 2011; will be \$1,604,430.14 as of August 29, 2011, the

anticipated funding date pursuant to this Agreement). The Mortgage Note is not scheduled to be fully amortized and satisfied until the conclusion of the term of the Middletown Lease on November 9, 2014.

I. Subsequent to the Petition Date, Borders informed Landlord that Borders would seek to reject the Middletown Lease pursuant to section 365 of the Bankruptcy Code.

J. Landlord has informed Borders that Landlord believes it has an administrative expense claim against Borders' bankruptcy estate in the amount of \$480,046 for repairs to the Middletown Property, plus additional significant damages caused by the removal of the racking system to the flooring, together with general unsecured claims of approximately \$100,000, and that Landlord would assert such claims in conjunction with, or in addition to, a rejection claim in the event that Borders rejects the Middletown Lease.

K. Landlord disputes any and all liability to Borders and contends that upon rejection of the Middletown Lease, Landlord would have a complete defense to any foreclosure action upon the Middletown Property and to any action to collect amounts due and owing under the Mortgage Note.

L. Borders disputes any and all liability to Landlord and contends that upon rejection of the Middletown Lease, Borders could proceed against Landlord and/or foreclose upon the Middletown Property to collect amounts due and owing under the Mortgage Note.

M. The Parties desire to avoid costly litigation and mutually release all claims on the terms and conditions described below.

NOW, THEREFORE, in consideration of the foregoing, and for good and valuable consideration, the receipt of which is acknowledged, the Parties agree to be legally bound, subject to approval of this Settlement Agreement by the Court, as follows:

1. **Payment.** Within the later of (i) three (3) business days of entry of a final and non-appealable order approving this Settlement Agreement and (ii) the Surrender Date (as defined below), which date is anticipated to be not later than August 29, 2011 (the “**Effective Date**”), Landlord will pay to Borders the sum of \$482,000.00 in immediately available U.S. funds (the “**Termination Fee**”) by wire transfer pursuant to instructions provided by Borders. In the event that Landlord fails to timely pay the Termination Fee on the Effective Date, or if the Termination Fee is dishonored, reversed, or otherwise not available to Borders for any reason, then Borders may, in its sole discretion, declare this Settlement Agreement entirely void and of no effect.

2. **Termination of the Middletown Lease.** Upon the Effective Date and payment of the Termination Fee, the Middletown Lease will be deemed terminated. Borders will surrender the Middletown Property to Landlord in “as is, where is” condition by the Effective Date (the “**Surrender Date**”). Landlord will not object to the motion to be filed requesting court authority to terminate the Middletown Lease pursuant to the terms of this Agreement.

3. **Abandonment of Personal Property.** Any and all personal property of Borders remaining at the Middletown Property on the Surrender Date will be deemed abandoned by Borders and all such abandoned property will become property of Landlord to do with as Landlord sees fit in its sole discretion. To the extent necessary or desirable, Borders agrees that it will execute an assignment or bill of sale to evidence Landlord’s title to such abandoned property.

4. **Landlord Release.** Upon the Effective Date, Landlord, on behalf of itself and its respective agents, parties in interests, employees, officers, shareholders, members, subsidiaries, parent companies, predecessors, affiliates, successors, assigns and any other related entities

releases, waives and forever discharges the Debtors and their respective bankruptcy estates, agents, parties in interests, employees, officers, shareholders, members, subsidiaries, parent companies, predecessors, affiliates, successors, assigns and any other related entities from all past or present actions, causes of action, proceedings, claims, administrative expense requests, defenses, demands, damages, costs, liabilities, agreements, promises, warranties, representations, duties, debts, and obligations of every kind whatsoever in law or equity, whether contingent or matured, whether asserted or unasserted, whether known or unknown, that are based on acts, omissions, or events that occurred on or before the Surrender Date related to the Middletown Lease, Middletown Property and/or the Loan Agreement, the Mortgage Note, and/or the Mortgage. For avoidance of doubt, this release extends to any and all obligations with respect to third party claims and the condition of the Middletown Property.

5. **Borders Release**. Upon the Effective Date and after payment of the Termination Fee, Borders, on behalf of itself, its bankruptcy estate, and its respective agents, parties in interests, employees, officers, shareholders, members, subsidiaries, parent companies, predecessors, affiliates, successors, assigns and any other related entities releases, waives and forever discharges the Landlord and its agents, parties in interests, employees, officers, shareholders, members, subsidiaries, parent companies, predecessors, affiliates, successors, assigns and any other related entities from all past or present actions, causes of action, proceedings, claims, administrative expense requests, defenses, demands, damages, costs, liabilities, agreements, promises, warranties, representations, duties, debts, and obligations of every kind whatsoever in law or equity, whether contingent or matured, whether asserted or unasserted, whether known or unknown, that are based on acts, omissions, or events that

occurred on or before the Surrender Date related to the Middletown Lease, Middletown Property, the Loan Agreement, the Mortgage Note, and/or the Mortgage.

6. **Satisfaction of the Mortgage Note and Release of the Mortgage.** Upon the Effective Date and payment of the Termination Fee, the Mortgage Note will be deemed satisfied in full. A Mortgage Satisfaction Piece will be executed by Borders on the Effective Date and held in escrow by Landlord's counsel. Upon confirmation of indefeasible receipt by Borders of the Termination Fee, Landlord will discharge the Mortgage by recording the Mortgage Satisfaction Piece.

7. **No Release of Obligations Under this Settlement Agreement.** Notwithstanding any provision to the contrary, the waivers and releases in this Settlement Agreement will not release, discharge or waive any covenants, representations, warranties or obligations of the Parties under this Settlement Agreement itself.

8. **No Admission of Liability.** Neither this Settlement Agreement, nor any of its terms, nor performance of the terms by any Party will constitute or be construed as an admission or acknowledgement of any liability by any Party.

9. **Retention of Jurisdiction.** The Court will retain jurisdiction to resolve any disputes arising under or related to this Settlement Agreement.

10. **Representations and Warranties.** Each Party represents and warrants that it: (1) has the authority to enter into this Settlement Agreement without the consent of any person or entity, subject to paragraph 15 below; (2) owns the claims being released; and (3) has not assigned or transferred the claims being released.

11. **Representations and Warranties - Brokers.** Borders represents and warrants that it is not being represented by a broker with respect to the transactions contemplated herein

and agrees that it will indemnify and hold harmless Landlord in the event that a broker claiming representation of Borders asserts a claim against Landlord with respect to the transactions contemplated herein. Landlord represents and warrants that it is not being represented by a broker with respect to the transactions contemplated herein and agrees that it will indemnify and hold harmless Borders in the event that a broker claiming representation of Landlord asserts a claim against Borders with respect to the transactions contemplated herein.

12. **Entire Agreement/Freely Negotiated Agreement.** This Settlement Agreement constitutes the entire agreement between the Parties with respect to the referenced subject matter set forth herein and may not be altered, modified, or amended in any respect, except upon the written agreement of the Parties. The Parties have freely negotiated this Settlement Agreement and each have had the opportunity to consult with counsel and fully understand its terms. The Parties jointly drafted this Agreement and no provision in this Settlement Agreement will be construed presumptively against any Party. If any part of this Agreement is found to be illegal or to violate public policy, or for any reason to be unenforceable at law, such finding will not invalidate any other part hereof.

13. **Counterparts.** This Settlement Agreement may be executed by facsimile and in one or more counterparts, all of which, when taken together, will constitute an entire Settlement Agreement.

14. **Governing Law.** This Settlement Agreement is governed by the law of the Commonwealth of Pennsylvania, without respect to Pennsylvania's choice of law principles.

15. **Approval By The Bankruptcy Court As Condition Precedent.** This Settlement Agreement, and all terms, conditions, releases, waivers, and representations contained

herein, is conditioned upon and will be of no force or effect whatsoever unless and until this Settlement Agreement has been approved by an order of the Court.

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The Parties have executed this Settlement Agreement as of the Execution Date.

BORDERS, INC.

By: \_\_\_\_\_  
[name]  
[title]

Dated: \_\_\_\_\_

HARRISPORT ASSOCIATES,  
A Pennsylvania Limited Partnership

By: HarrisPort I, Inc., a Pennsylvania  
Corporation, its sole General Partner

By: \_\_\_\_\_  
Gregg A. Schwotzer  
President

Dated: \_\_\_\_\_