

United States Bankruptcy Court Northern District of Illinois

ADMINISTRATIVE PROOF OF CLAIM

Name of Debtor **Kmart Corporation**

Case Number **02-02474**

This Space is For Court Use Only

FILED
 UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF ILLINOIS
 FEB 25 2002
 KENNETH S. GARDNER
 MAILROOM - MM

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. §503.

Name of Creditor (The person or entity to whom the debtor owes money or property):
R&F Henrietta, LLC

- Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
- Check box if you have never received any notices from the bankruptcy court in this case.
- Check box if the address differs from the address on the envelope sent to you by the court.

Name and Addresses Where Notices Should be Sent:
 Kevin M. Newman, Esq.
 MENTER, RUDIN & TRIVELPIECE, P.C.
 500 S. SALINA ST. SUITE 500
 SYRACUSE, NY 13202
Telephone Number: 315-474-7541

Account or other number by which creditor identifies debtor:
 27752-14019

Check here if this claim replaces a previously filed claim, dated: amends

1. Basis for Claim

- Goods sold
- Services performed
- Money loaned
- Personal injury/wrongful death
- Taxes
- Other - See annexed Promissory Note.

- Retiree benefits as defined in 11 U.S.C. §1114(a)
- Wages, salaries, and compensation (Fill out below)
 Your social security number
 Unpaid compensation for services performed from to

2. Date debt was incurred: Post-Petition

3. If court judgment, date obtained:

4. Total Amount of Claim at Time Case Filed: \$2,000,000.00 plus interest of 10% from February 1, 2002 plus attorneys' fees, costs, expenses and disbursements.

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.

Check this box if claim includes charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Secured Claim

Check this box if your claim is secured by collateral (including a right of setoff).

Brief Description of Collateral:
 Real Estate Motor Vehicle
 Other

Value of Collateral: \$

Amount of arrearage and other charges at time case filed included in secured claim, if any \$

6. Unsecured Priority Claim.

- Check this box if you have an unsecured priority claim
 Amount entitled to priority \$
 Specify the priority of the claim.
- Wages, salaries, or commissions (up to \$4000), earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507(a)(3)
- Contributions to an employee benefit plan - U.S.C. §507(a)(4)
- Up to \$1,800 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507(a)(6)
- Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. §507(a)(7)
- Taxes or penalties of governmental units - 11 U.S.C. §507(a)(8)
- Other - Specify applicable paragraph of 11 U.S.C. §365(d)(3)
 *Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after date of adjustment.

7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

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Date / Sign and print the name and title, if any, of the creditor or other person authorized to file this claim
 February 14, 2002 / R&F Henrietta, LLC

By: Neil Goldberg, Manager

2/25/02 md 322

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§152 and 3571.

**SECOND INSTALLMENT
PROMISSORY NOTE**

\$2,000,000.00

November 12, 2001

FOR VALUE RECEIVED, the undersigned, **KMART CORPORATION**, a Michigan corporation having an address of 3100 West Big Beaver Road, Troy, Michigan 48084 (the "Maker"), hereby unconditionally promises to pay to **R&F HENRIETTA, LLC** a New York limited liability company having an address of 7248 Morgan Road, Liverpool, New York 13088 (the "Lender"), in lawful money of the United States of America the principal amount of Two Million and no/100 Dollars (\$2,000,000).

1. **Terms of Payment.** The Maker promises to pay the entire unpaid principal amount evidenced by this Note to the Lender on February 1, 2002. Lender shall deliver to Maker (with a copy addressed to Maker, marked "Attention: Director - Property Disposition") wire transfer instructions, together with a written reminder to pay the entire unpaid principal amount evidenced by this Note (collectively, the "Notice"), which Notice may be given either (i) not less than ten (10) days but not more than thirty (30) days prior to February 1, 2002, or (ii) at any time after February 1, 2002, although Maker shall not be in default hereunder nor shall Maker have any liability to Lender for the late payment of this Note until the later of ten (10) days after Maker's receipt of the Notice from Lender or February 1, 2002 (the later of such dates being herein called the "**Payment Deadline**"). Notwithstanding anything to the contrary contained in this Note, Lender has agreed to deliver the Notice as an accommodation and scheduling aid to Maker; accordingly, Lender's failure, delay or delinquency to deliver the Notice shall in no event whatsoever forfeit Lender's right to receive the entire unpaid principal amount evidenced by this Note following subsequent delivery of the Notice, nor relieve Maker of its obligation to pay the entire unpaid principal amount evidenced by this Note following delivery of the Notice.
2. **Interest.** If Maker shall fail to pay the entire unpaid principal amount evidenced by this Note by the Payment Deadline, Maker shall be obligated to pay interest on the entire unpaid principal amount evidenced by this Note from the Payment Deadline until the date paid at the rate of 10% per annum.
3. **Prepayments.** The Maker may prepay any portion of the principal outstanding at any time without penalty or premium.
4. **Place of Payment.** All payments hereunder shall be made without set-off or counterclaim by the Maker and shall be made to the Lender by wire transfer pursuant to the wire instructions attached hereto as Schedule "1", or at such place as may be designated by the Lender to the Maker in writing.
5. **Immediately Due and Payable.** The Lender, or any other holder hereof may, at its option, declare this Note to be, and the same shall forthwith become, immediately due and payable for the entire unpaid balance thereof if the Maker becomes insolvent, or admits in

writing Maker's inability to pay this debt as it matures, or files a petition in voluntary bankruptcy or seeks relief under any provisions of any bankruptcy reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction whether now or hereafter in effect.

6. Certain Waivers. The Maker hereby waives presentment, notice of dishonor, protest, notice of protest and any and all other notices or demands (other than demand for payment) in connection with the delivery, acceptance, performance, default or enforcement of this Note.

7. Cost of Collection and Legal Fees. The Maker shall be liable to the Lender and shall pay to the Lender immediately on demand as part of the Maker's liability under this Note, all costs and expenses of the Lender, including without limitation, reasonable attorneys' fees and disbursements of the Lender's counsel, incurred in the collection or enforcement or attempted collection or enforcement of the Lender's rights under this Note, whether within or apart from any legal action or proceeding.

8. No Waiver of Remedies. No failure to exercise and no delay in exercising, on the part of the Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

9. Entire Agreement; Modifications. This Note contains the entire agreement between the Lender and the Maker with respect to all subject matters contained herein. This Note cannot be amended, modified or changed in any way except by a written instrument executed by both the Maker and the holder of this Note.

10. Successors and Assigns. This Note shall be binding upon the Maker and his respective successors and permitted assigns. Whenever the Maker is referred to, such reference shall be deemed to include the successors and assigns of the Maker.

11. Governing Law. This Note shall be governed by the laws of the State of New York, without regard to its principles of conflicts of law.

IN WITNESS WHEREOF, the Maker has caused this Note to be executed by its duly authorized officer as of the date first written above.

KMART CORPORATION

By: 

Name: LAWRENCE KELLAR

Its: VICE PRESIDENT

STATE OF MICHIGAN)
COUNTY OF OAKLAND) SS:

On the 12th day of November, in the year 2001, before me, the undersigned, personally appeared LORRENCE KELLAR VICEPRESIDENT, of **KMART CORPORATION**, a Michigan corporation, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, that by his/her signature on the instrument, the individual, or the corporation upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in TROY OAKLAND
COUNTY MI.

Carol A. Downes

Notary Public, Oakland County, Michigan
My commission expires:

CAROL A. DOWNES
Notary Public, Oakland County, Michigan
My Commission Expires May 18, 2005

SCHEDULE 1

Wire Transfer Instructions

Purchaser's Wire Instructions

Bank: HSBC Bank, USA
Bank Address: Global Funds Department, New York City, New York
ABA Routing Number: 021001088
Account Number: 241215013