

UNITED STATES BANKRUPTCY COURT <u>NORTHERN</u> DISTRICT OF <u>ILLINOIS</u>		<b>PROOF OF CLAIM</b>
Name of Debtor Kmart Corporation		Case Number 02-B02474
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 other entity to whom the debtor owes money or property). RenGroup Development, Inc.		<div style="font-size: 2em; font-weight: bold; margin-bottom: 10px;">FILED</div> UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF ILLINOIS  MAR 19 2002  KENNETH S. GARDNER, CLERK PS REP. - AR  THIS SPACE IS FOR COURT USE ONLY
Name and address where notices should be sent Thomas W. Goedert Earl L. Neal & Associates, L.L.C. 203 N. LaSalle, Ste. 2300 Chicago, IL 60601 Telephone number: 312-641-7144		
<input type="checkbox"/> 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. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.		
Account or other number by which creditor identifies debtor:  None		Check here if this claim <input type="checkbox"/> replaces a previously filed claim, dated: _____ <input type="checkbox"/> amends
<b>1. Basis for Claim</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other <u>Promissory Note &amp; Intentional Tort Claim</u> <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)		
<b>2. Date debt was incurred:</b> 01/04/01		<b>3. If court judgment, date obtained:</b> N/A
<b>4. Total Amount of Claim at Time Case Filed:</b> \$ <u>2,356,000.00</u> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>5. Secured Claim.</b> <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____  Value of Collateral. \$ _____  Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		<b>6. Unsecured Priority Claim.</b> <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim. <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650)* 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) <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4) <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6) <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8) <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____) *Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment
<b>7. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. <b>8. Supporting Documents:</b> 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. <b>9. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY  <div style="font-size: 1.5em; font-weight: bold;">3-19-02</div> <div style="font-size: 1.5em; font-weight: bold;">789 SM</div>
Date 3/22/02	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any). <i>Thomas W. Goedert</i> Atty for REN GROUP	
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.		

## INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In particular types of cases or circumstances, such as bankruptcy cases that are not filed voluntarily by a debtor, there may be exceptions to these general rules.

### DEFINITIONS

#### **Debtor**

The person, corporation, or other entity that has filed a bankruptcy case is called the debtor.

#### **Creditor**

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

#### **Proof of Claim**

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed.

#### **Secured Claim**

A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property.

Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim. (See also *Unsecured Claim*.)

#### **Unsecured Claim**

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

#### **Unsecured Priority Claim**

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims*.

### Items to be completed in Proof of Claim form (if not already filled in)

#### **Court, Name of Debtor, and Case Number:**

Fill in the name of the federal judicial district where the bankruptcy case was filed (for example; Central District of California), the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the court, all of this information is near the top of the notice.

#### **Information about Creditor:**

Complete the section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property, and the debtor's account number, if any. If anyone else has already filed a proof of claim relating to this debt, if you never received notices from the bankruptcy court about this case, if your address differs from that to which the court sent notice, or if this proof of claim replaces or changes a proof of claim that was already filed, check the appropriate box on the form.

#### **1. Basis for Claim:**

Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in your social security number and the dates of work for which you were not paid.

#### **2. Date Debt Incurred:**

Fill in the date when the debt first was owed by the debtor.

#### **3. Court Judgments:**

If you have a court judgment for this debt, state the date the court entered the judgment.

#### **4. Total Amount of Claim at Time Case Filed:**

Fill in the total amount of the entire claim. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges.

#### **5. Secured Claim:**

Check the appropriate place if the claim is a secured claim. You must state the type and value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured (See DEFINITIONS, above).

#### **6. Unsecured Priority Claim:**

Check the appropriate place if you have an unsecured priority claim, and state the amount entitled to priority (See DEFINITIONS, above). A claim may be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim.

#### **7. Credits:**

By signing this proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

#### **8. Supporting Documents:**

You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	Case No. 02-B02474
	)	(Jointly Administered)
KMART CORPORATION, <i>et al.</i> ,	)	Chapter 11
	)	Chief Judge Susan Pierson Sonderby
	)	
Debtors.	)	

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**Attachment to Proof of Claim  
of Creditor RenGroup Development, Inc.**

1. Basis for Claim:

- a. Promissory note executed by Kmart Corporation on January 4, 2001, in the amount of \$1.16 million. To date, \$356,000 is due under the note.
- b. Claim for \$4 million for tortious interference with a contract, filed against Kmart Corporation in Oakland County Circuit Court (Michigan) on December 26, 2001, as Case No. 01-036357-CZ.

8. Supporting Documents:

- a. Promissory note dated January 4, 2001.
- b. Complaint dated November 20, 2001.
- c. Counter-complaint dated December 26, 2001.

# EXHIBIT A

Bank One Received original on 2-21-01 as collateral  
for Line of Credit  
**PROMISSORY NOTE**  
Robert E. Marschall

Amount: \$1,160,000.00  
Date of Note: January 4, 2001

**FOR VALUE RECEIVED**, the undersigned, **KMART OF MICHIGAN, INC.**, a Michigan corporation ("Borrower"), whose address is 3100 West Big Beaver Road, Troy, Michigan 48084, hereby promises to pay to the order of **RENGROUP DEVELOPMENT, INC.**, a Michigan corporation ("Holder"), at its offices at 30730 Florence, Garden City, Michigan 48135, or at such other place as the Holder hereof may designate in writing from time to time, the principal sum of One Million One Hundred Sixty Thousand and 00/100 (\$1,160,000.00) Dollars, in lawful money of the United States of American, which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, in the manner hereinafter provided.

This Promissory Note shall not bear interest.

This Promissory Note shall be paid upon receipt by Borrower of all of the following: (i) a sworn statement signed by Holder and the Contractor (as defined in that certain Sale and Purchase Agreement dated November 10, 1998 between Holder and Graimark/Walker Urban Land Development LLC, as amended ["S&P Agreement"]), stating that the remainder of the Site Balance (as defined in the S&P Agreement) has been completed; (ii) final unconditional waivers of lien satisfactory to Title Agency (as defined in the S&P Agreement) from the Contractor, all subcontractors and suppliers and all laborers who have provided notices of furnishing to the designee in connection with the Site Balance, all dated after completion of the Site Balance; (iii) a certificate of completion of the Site Balance from Holder and Contractor addressed to Borrower, and copies of all applicable final licenses, permits, approvals and a certificate of completion from all applicable governmental agencies; and (iv) a statement from Borrower's civil engineer ("Engineer") confirming the completion of the Site Balance in accordance with the Site Specifications (as defined in the S&P Agreement) and Paragraph 5 of the S&P Agreement.

Borrower shall have five (5) business days to inspect the foregoing and the completion of the Site Balance. Unless Borrower shall convince the Engineer to withdraw his certification of the Site Balance by notice in writing to Title Agency and Holder within such period, Borrower shall pay to Holder the outstanding balance of this Promissory Note.

If: (a) the Site Balance is not completed on or before the earlier of: (i) thirty (30) days after notice from Borrower to Holder to complete the Site Balance, but such notice shall not be given prior to March 1, 2001; or (ii) May 1, 2001; (b) the Site Balance is not completed in accordance with the Requirements and Site Specifications; or (c) the costs incurred by Holder for the Site Balance are not paid in full, Borrower may complete the Site Balance in accordance with the Requirements (as defined in the S&P Agreement) and the Site Specifications, and deduct the reasonable cost of such completion and/or

the unpaid costs of the Site Balance from the outstanding balance of this Promissory Note and pay the balance, if any, to Holder.

Borrower, for itself and its legal representatives, successors and assigns and every person and entity at any time liable for the indebtedness under this Promissory Note, or any part thereof, expressly waives, to the extent allowable under applicable law, presentment, demand, protest, notice of dishonor, notice of non-payment, notice of maturity, notice of protest, presentment for the purposes of accelerating maturity, diligence in collection, marshalling rights, subrogation rights, anti-deficiency defenses, remedies, claims, laws requiring appraisal or evaluation, and any exemption under any exemption laws or under any other exemption or insolvency laws.

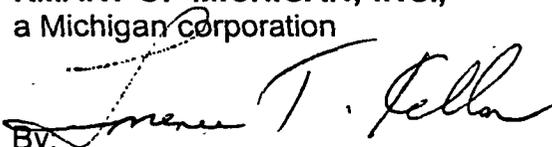
This Promissory Note may be prepaid, in part or in full, at any time without penalty or premium.

This Promissory Note is delivered and accepted in the State of Michigan and shall be governed and construed in accordance with its laws. If any provision of this Promissory Note is in conflict with any statute or applicable rule of law, or is otherwise unenforceable for any reason whatsoever, such provision shall be deemed null and void to the extent of such conflict or unenforceability and shall be deemed separate from and shall not invalidate any other provision of this Promissory Note. Time shall be of the essence under this Promissory Note. This Promissory Note may not be amended except by a writing signed by Borrower and Holder. This Promissory Note shall, in accordance with its terms, be binding upon Borrower and its successors and assigns and shall inure to the benefit of Holder and its successors and assigns.

**IN WITNESS WHEREOF**, Borrower has caused this Promissory Note to be executed on the day and year first above written.

**BORROWER:**

**KMART OF MICHIGAN, INC.,**  
a Michigan Corporation

By: 

Lorrence T. Kellar, Vice President

# EXHIBIT B



STATE OF MICHIGAN  
JUDICIAL DISTRICT  
6<sup>th</sup> JUDICIAL CIRCUIT  
COUNTY PROBATE

SUMMONS AND COMPLAINT

CLERK OF COURT: JUDGE STEVEN N. ANDREWS  
COUNTY: KMART CORP VS RENGROUP

Court address 1200 N. Telegraph, Dept. 404 Pontiac, Michigan 48341-0404

248-858-1000 Court telephone no.

Plaintiff name(s), address(es), and telephone no(s) Kmart Corporation 3100 W. Big Beaver Rd. Troy, Michigan 48084
Plaintiff attorney, bar no., address and telephone no Howard & Howard Attorneys, P.C. 39400 Woodward Ave., Suite 101 Bloomfield Hills, Michigan 48304-5151 (248) 645-1483

Defendant name(s), address(es), and telephone no(s) RenGroup Development, Inc. 30730 Florence Garden City, Michigan.48135
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**SUMMONS NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. YOU HAVE 21 DAYS after receiving this summons to file an answer with the court and serve a copy on the other party or to take other lawful action (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued	NOV 20 2001	This summons expires	FEB 19 2002	Court clerk	G. WILLIAM CADDELL
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\*This summons is invalid unless served on or before its expiration date

**COMPLAINT** Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.

**Family Division Cases**

- There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
  - An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in \_\_\_\_\_ Court.
- The action  remains  is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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**General Civil Cases**

- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint/
  - A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in \_\_\_\_\_ Court
- The action  remains  is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
------------	-------	---------

**VENUE**

Plaintiff(s) residence (include city, township, or village) Kmart Corporation 3100 W. Big Beaver Rd. Troy, Michigan 48084	Defendant(s) residence (include city, township, or village) RenGroup Development, Inc. 30730 Florence Garden City, Michigan 48135
Place where action arose or business conducted Oakland County	

I declare that the complaint information above and attached is true to the best of my information, knowledge, and belief.

November 20, 2001  
Date

Signature of attorney Nancy Komer Stone (P48515)

If you require special accommodations to use the court because of disabilities, contact the court immediately to make arrangements.

STATE OF MICHIGAN  
RECEIVED FOR FILING  
OAKLAND COUNTY  
IN CIRCUIT COURT FOR THE COUNTY OF OAKLAND

01 NOV 20 P3:57

KMART CORPORATION,

Plaintiff, BY \_\_\_\_\_  
DEPUTY CLERK

VS.

RENGROUP DEVELOPMENT, INC.,

Defendant.

01-036357-CZ



OAKLAND COUNTY JUDGE STEVEN N. ANDREWS  
KMART CORP VS RENGROUP

**Howard & Howard**  
Law for business

The Pinhurst Office Center  
Suite 101  
39400 Woodward Avenue  
Bloomfield Hills, MI 48304 5151  
248 645 1483

The Michigan Building  
Suite 200  
100 Portage Street  
Kalamazoo, MI 49007 4802  
616.382 1483

The Phoenix Building  
Suite 500  
222 North Washington Square  
Lansing, MI 48933 1817  
517 485 1483

One Technology Plaza  
Suite 600  
211 Fulton Street  
Peoria, IL 61602 1350  
309 672 1483

Jon Robert Steiger (P35505)  
Michael G. Cruse (P38837)  
Nancy Komer Stone (P48515)-  
HOWARD & HOWARD ATTORNEYS, P.C.  
Attorneys for Plaintiff  
39400 Woodward Avenue, Suite 101  
Bloomfield Hills, Michigan 48304-5151  
(248) 645-1483

**COMPLAINT AND JURY DEMAND**

There is no other civil action arising out of the same transaction or occurrence as alleged in this complaint pending nor has any such action been previously filed and dismissed or transferred after having been assigned to a Judge.

Plaintiff Kmart Corporation ("Kmart") brings this Complaint against Defendant RenGroup Development, Inc. ("RenGroup"), and states as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff Kmart is a Michigan corporation with its principal place of business in Oakland County, Michigan.

The Pinehurst Office Center  
Suite 101  
39400 Woodward Avenue  
Bloomfield Hills, MI 48304 5151  
248 645 1483

The Michigan Building  
Suite 200  
100 Portage Street  
Kalamazoo, MI 49007 4802  
616 382 1483

The Phoenix Building  
Suite 500  
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Lansing, MI 48933 1817  
517 485 1483

One Technology Plaza  
Suite 600  
211 Fulton Street  
Peoria, IL 61602 1350  
309 672 1483

2. On information and belief, RenGroup is a Michigan corporation that conducts business in Oakland County, Michigan.

3. This Court has jurisdiction over this matter and venue is proper as RenGroup conducts business in Oakland County, and the amount in controversy exceeds the sum of \$25,000.00, exclusive of costs and interest.

### FACTUAL BACKGROUND

4. On November 10, 1998, RenGroup and Graimark/Walker Urban Land Development LLC ("Graimark") entered into a Sale and Purchase Agreement (the "Agreement") whereby RenGroup agreed to sell and Graimark agreed to purchase certain property situated in the City of Detroit, Wayne County, Michigan to be utilized for the future construction of a Super Kmart store on the property.

5. On July 6, 1999, as part of the execution of a Second Amendment to the Agreement, Graimark assigned its rights under the Agreement to Kmart and Kmart accepted such assignment and assumed the obligations of Graimark under the Agreement. The Second Amendment to the Agreement is in the possession of RenGroup.

6. Pursuant to the Fifth Amendment to the Agreement, paragraph 21(a) of the Agreement was amended to provide that RenGroup was to, after the closing on the property, enter into a construction contract with a qualified bondable and licensed contractor "for the construction of all retaining walls and the installation of properly compacted engineered fill in order to permit the construction of the proposed Kmart retail store as determined by Buyer ("Store"), on the Property ("Site Balance")", as well as to "demolish all structures on the Property, lawfully remove from the Property and lawfully dispose of all debris from such demolition, as well as asphalt pavement on the Property and to bring Buyer's Building Pad Area

to grade to receive Buyer's building floor and appropriate base" (collectively referred to herein as the "Site Work"). The Agreement also provided that the Site Work was to be completed in accordance with engineering plans and specifications approved by Kmart. The Fifth Amendment to Agreement is in the possession of RenGroup.

**Howard  Howard**  
Law for Business

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7. Paragraph 21(a) was also amended to provide:

On or before the earlier of: (i) thirty (30) days after notice from Buyer to Seller to complete the Site Balance, but such notice shall not be given prior to March 1, 2001; or (ii) May 1, 2001, Seller shall cause the Contractor to complete the Site Balance in accordance with the Requirements and the Site Specifications. If the Site Balance is not timely completed in accordance with the Contract, Requirements and Site Specifications, Buyer may cause the Site Balance to be completed in compliance with the Contract, Requirements and Site Specifications and the reasonable costs and expenses incurred by Buyer in connection with the completion of the Site Balance in such manner shall be deducted from the balance due Seller under the Note.

8. The closing occurred on January 4, 2001. Also on January 4, 2001, Kmart executed a Promissory Note for the benefit of RenGroup in the amount of \$1,160,000.00, which was to be paid at the completion of the Site Work less the reasonable cost of such completion and/or the unpaid cost of the Site Work to the extent applicable.

9. RenGroup entered into a contract with Site Development, Inc. on January 22, 2001 for the Site Work at a cost of \$679,000.00.

10. Due to the fact that RenGroup had not timely completed the Site Work in compliance with the contract, requirements and site specifications, Kmart provided notice pursuant to the Agreement of its intent to complete the Site Work, provided that the reasonable costs and expenses incurred by Kmart in connection with the completion of the Site Work would be deducted from the balance due RenGroup under the Promissory Note.

11. Further, Kmart learned from Site Development, Inc. that the contract that RenGroup had entered into with Site Development, Inc. on January 22, 2001, did not cover all of

**Howard  Howard**  
LAW FOR BUSINESS

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the required work, *e.g.*, it did not provide for the removal of building foundations, did not provide for the disposal of the large amount of soil that would be generated as a result of the Site Work, and did not provide for the purchase of an appropriate amount of soil on which to build, among other things.

12. On April 20, 2001, Kmart entered into a contract with Site Development, Inc., for the completion of the Site Work. As a result of the additional items that were not included in RenGroup's contract with Site Development, Inc., and further work required to be performed that was not originally contemplated, Kmart incurred costs for the Site Work in excess of \$2 million.

13. In accordance with paragraph 21(a) of the Agreement, the costs and expenses incurred by Kmart are to be deducted from the balance due RenGroup under the Promissory Note. Since this amount exceeds the amount due under the Promissory Note, RenGroup is indebted to Kmart.

14. Despite requests made upon RenGroup by Kmart for RenGroup to reimburse Kmart for the costs and expenses incurred for the completion of the Site Work, RenGroup has refused to abide by the Agreement and pay such monies to Kmart.

**COUNT I - BREACH OF CONTRACT**

15. Kmart incorporates and realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

16. RenGroup agreed to reimburse Kmart for the costs and expenses incurred by Kmart for the completion of the Site Work, which exceeds the amount due under the Promissory Note.

17. RenGroup has not made the required payment to Kmart.

18. As a result of the foregoing, RenGroup has breached the Agreement with Kmart.

19. As a direct and proximate result of this breach, Kmart has been damaged.

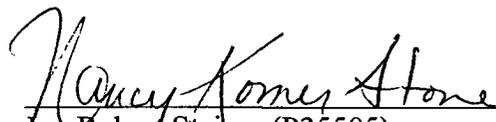
**WHEREFORE**, Kmart demands judgment against RenGroup as follows:

- a. Awarding Kmart its damages proven in this case;
- b. Awarding Kmart its costs and reasonable attorney's fees; and
- c. Granting such other relief, at law or equity, that justice requires.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS, P.C.

By:

  
Jon Robert Steiger (P35505)  
Michael G. Cruse (P38837)  
Nancy Komer Stone (P48515)

Attorneys for Plaintiff  
39400 Woodward Avenue, Suite 101  
Bloomfield Hills, Michigan 48304-5151  
(248) 645-1483

Dated: November 20, 2001

**Howard & Howard**  
Law for business

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**DEMAND FOR TRIAL BY JURY**

Kmart hereby demands a jury on all issues so triable.

**Howard & Howard**  
Law for Business

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Respectfully submitted,

HOWARD & HOWARD ATTORNEYS, P.C.

By: 

Jon Robert Steiger (P35505)

Michael G. Cruse (P38837)

Nancy Komer Stone (P48515)

Attorneys for Plaintiff

39400 Woodward Avenue, Suite 101

Bloomfield Hills, Michigan 48304-5151

(248) 645-1483

Dated: November 20, 2001

# EXHIBIT C

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

KMART CORPORATION,

Plaintiff/Counter-Defendant,

v

RENGROUP DEVELOPMENT, INC.,

Defendant/Counter-Plaintiff.

01-036357-CZ



OAKLAND COUNTY JUDGE STEVEN N. ANDREWS  
KMART CORP vs RENGROUP

RECEIVED FOR FILING  
OAKLAND COUNTY CLERK

01 DEC 26 P 3:27

BY  
DEPUTY COUNTY CLERK  
Jon Robert Steiger (P355055)  
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**ANSWER, AFFIRMATIVE DEFENSES AND COUNTER-COMPLAINT  
OF RENGROUP DEVELOPMENT, INC., AND JURY DEMAND**

Defendant-RenGroup Development, Inc. ("RenGroup"), by counsel, in response to the Complaint of Kmart Corporation ("Kmart"), states as follows:

**PARTIES AND JURISDICTION**

1. Admitted.
2. Denied as untrue. RenGroup solely conducts business in Wayne County.
3. RenGroup admits that the amount in controversy exceeds \$25,000.00, exclusive of costs and interest. RenGroup denies as untrue the remaining allegations of

¶3 and affirmatively states that venue was improperly laid in the Oakland County Circuit Court.

### FACTUAL BACKGROUND

4. Admitted.

5. Admitted.

6. Denied as untrue. The Agreement was reduced to writing and the writing speaks for itself. RenGroup affirmatively states that ¶6 inaccurately paraphrases and inaccurately summarizes the Agreement.

7. Defendant admits that the Agreement contains the quoted language, but denies as untrue that the quoted language is all of ¶21(a) of the Agreement. RenGroup affirmatively states that ¶7 inaccurately summarizes the Agreement.

8. RenGroup admits that the closing of the purchase and sale occurred on January 4, 2001 and on the same date Kmart executed a promissory note for the benefit of RenGroup in the amount of \$1,160,000.00 (the "Note"). RenGroup denies as untrue the remaining allegations of ¶8. RenGroup affirmatively states that the Note was executed *in pari materia* with the Agreement and therefore must be read consistently with the Agreement.

9. Admitted.

10. Denied as untrue. RenGroup affirmatively states that Kmart interfered with RenGroup's work, interfered with RenGroup's business relationship with the

earthwork contractor, and thereby breached the Agreement and rendered impossible RenGroup's performance under the Agreement.

11. RenGroup admits that the Contract (as defined in the Agreement) did not include the demolition work and affirmatively states that the demolition work was covered by a separate contract with another contractor. RenGroup further denies that the Contract failed to provide for the removal of foundations and denies that the Contract failed to include the disposal of all soils. RenGroup admits that the Contract did not include the purchase of soils, but affirmatively states that this was not necessary for the work, except in *de minimus* amounts.

12. RenGroup admits that, on or about April 20, 2001, Kmart entered a contract with Site Development, Inc. RenGroup denies as untrue the remaining allegations of ¶12 and affirmatively states that Kmart contacted with Site Development, Inc. to perform work far in excess of the work for which RenGroup was responsible under the Agreement.

13. RenGroup admits that the Agreement and the Note allow Kmart to deduct certain amounts from the balance due under the Note. RenGroup denies the remaining allegations of ¶13 and affirmatively states that Kmart has never accounted for any sums to be deducted from the balance due under the Note and further that no deductions were due to Kmart.

14. Denied as untrue. RenGroup affirmatively states that Kmart has never fully quantified its purported damages, never accounted for its alleged expenditures and therefore never made any meaningful request to RenGroup.

**COUNT I – BREACH OF CONTRACT**

15. RenGroup restates and incorporates by reference in Count I its preceding responses to the Complaint.

16. Denied as untrue.

17. Denied as untrue.

18. Denied as untrue.

19. Denied as untrue.

WHEREFORE, RenGroup respectfully requests that this Honorable Court dismiss the Complaint, award costs and attorney fees to RenGroup and provide all other relief to RenGroup that this Court finds just and equitable.

Respectfully submitted,

BARRIS, SOTT, DENN & DRIKER, P.L.L.C.

By:



Daniel J. LaCombe (P38602)

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211 West Fort Street, 15th Floor

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(313) 965-9725

Dated: December 26, 2001

**AFFIRMATIVE DEFENSES OF  
RENGROUP DEVELOPMENT, INC.**

RenGroup Development, Inc. ("RenGroup"), by counsel, for its affirmative defenses, states:

1. Venue is improperly laid in the Oakland County Circuit Court.
2. This Court lacks personal jurisdiction over RenGroup.
3. Kmart's Complaint fails to state a claim, in whole or in part, because it misconstrues and fails to incorporate the written contracts upon which it purports to be based.
4. Plaintiff has failed to join each and every claim, legal or equitable, that, at the time of service of the Complaint, Plaintiff had against Defendant arising out of the transaction or occurrence that forms the subject matter of this action and does not require for adjudication the presence of third parties over whom the Court cannot acquire jurisdiction.
5. To the extent that Defendant breached the Agreement, Plaintiff's breach of contract claim is barred nonetheless, in whole or in part, by Plaintiff's prior breach of the Agreement.
6. Plaintiff's claims are barred, in whole or in part, by the parol evidence rule.
7. Plaintiff has suffered no damages.
8. Plaintiff has failed to mitigate its damages.

9. Defendant is entitled to a set-off of any amounts owing to Plaintiff by Defendant that Plaintiff may be entitled to recover in this action.

10. Plaintiff's claim is barred in whole or in part by the doctrine of merger by deed.

11. The doctrine of impossibility of performance precludes all or a part of Kmart's claim for breach of contract.

BARRIS, SOTT, DENN & DRIKER, P.L.L.C.

By: *Daniel J. LaCombe*

Daniel J. LaCombe (P38602)

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(313) 965-9725

Dated: December 26, 2001

**COUNTER-COMPLAINT OF RENGROUP DEVELOPMENT, INC.**

RenGroup Development, Inc. ("RenGroup"), by counsel, for its Counter-Complaint against Kmart Corporation ("Kmart"), states as follows:

1. On November 10, 1998, RenGroup entered a Purchase & Sale Agreement with Grainmark/Walker Urban Land Development L.L.C. (the "Agreement"). The subject of the Agreement was the sale of a certain portion of the former Bonnie Brook Golf Course facing Telegraph Road to the west, the Rouge River to the east, and located

south of Eight Mile Road in the City of Detroit, Wayne County, Michigan (the "Kmart Parcel").

2. The Kmart Parcel consists of approximately fifteen (15) acres out of the total of sixty-two (62) acres within the former Bonnie Brook Golf Course. The remaining acreage was retained by RenGroup for redevelopment of the Bonnie Brook Golf Course as a wetland conservation area, a golf course, clubhouse and entertainment facility (the "Wetlands and Golf Course").

3. A Second Amended to the Agreement, entered on July 8, 1999, substituted Kmart for Grainmark/Walker Urban Land Development L.L.C. as purchaser of the Kmart Parcel.

4. The Kmart Parcel was not suitable for redevelopment by Kmart as a retail center without rezoning by the City of Detroit.

5. The Kmart Parcel was not suitable for redevelopment by Kmart as a retail center without extensive earthwork to relocate the flood plain of the Rouge River from the Kmart Parcel to the Wetlands and Golf Course west of the Kmart Parcel, nor without a permit from the Michigan Department of Environmental Quality ("MDEQ") to perform that and other necessary earthwork.

6. RenGroup worked with Kmart, as a joint venturer, and also with the City of Detroit, the Michigan Department of Environmental Quality and other public and

private groups from July 6, 1999 until the fall of 2000 to rezone the Kmart Parcel and to obtain permission from the MDEQ to relocate the flood plain of the Rouge River.

7. Thereafter, Kmart continually modified its plans and specifications for redevelopment of the Kmart Parcel, which delayed commencement of the earthwork permitted by the MDEQ and required for Kmart's redevelopment.

8. In the meantime, the Agreement was amended on three additional occasions, December 9, 1999, August 31, 1999, and January 4, 2001. The Fifth Amendment to the Agreement was entered simultaneously with execution of a warranty deed conveying a fee interest in the Kmart Parcel to Kmart on January 4, 2001.

9. Thereafter, RenGroup promptly proceed with the demolition of the existing structures on the Kmart Parcel and with the earthwork required under the MDEQ permit.

10. More specifically, RenGroup contracted with a well-established demolition contractor, Dore & Associates Contracting ("Dore"), to perform all demolition work on the Kmart Parcel.

11. RenGroup also contracted separately with a well-established earthwork contractor, Site Development, Inc. ("Site") to perform all of the earthwork on the Kmart Parcel.

12. Kmart continued to modify its plans and specifications for the Kmart Parcel through March of 2001. Upon information and belief, Kmart commenced its

redevelopment of the Kmart Parcel operating under a design-build approach and therefore continued to modify its plans and specifications for the Kmart Parcel through the summer of 2001.

13. Kmart's continuously changing plans and specifications for redevelopment of the Kmart Parcel delayed the commencement of work by RenGroup's demolition contractors, Dore and Site.

14. Both demolition and earthwork on the Kmart Parcel were also delayed by force majeure, including exceptionally poor weather and inaction by permitting agencies that were both unanticipated by RenGroup and Kmart and outside of their control.

15. In addition, Kmart actively interfered with RenGroup's earthwork contract with Site, delayed Site's work and induced Site to breach its contract with RenGroup.

16. As a result of force majeure, Kmart's failure to complete its plans and specifications and Kmart's interference with RenGroup's contractors, RenGroup's work on the demolition and earthwork was delayed.

17. Nevertheless, on March 2, 2001, Kmart purportedly required RenGroup to complete its work within thirty (30) days. That notice was in breach of the parties' agreement and it deliberately interfered with RenGroup's contractual relations with Site.

18. On March 12, 2001, Kmart was formally notified by RenGroup that the soil erosion permit had been issued, but Kmart was delaying RenGroup's work by failing to either release the required funds or commence its own work on its retention pond on

the Kmart Parcel. Upon information and belief, Kmart had not released the funds or commenced its own work on the retention pond, because it had not completed its own engineering work and it was negotiating separately with Site to complete that work and work undertaken by Site for RenGroup.

19. On March 12, 2001, RenGroup also notified Kmart that Kmart was impeding the earthwork on the Kmart Parcel because it had failed to mark the trees it wished to retain. Again, upon information and belief, Kmart had failed to do so because its own engineering work was incomplete.

20. On March 22, 2001, Kmart again changed its plans and specifications for the Kmart Parcel.

21. RenGroup communicated freely with Kmart about the delays in the demolition and earthwork — due to Kmart's interference, its delays in completion of its engineering, force majeure — throughout January, February and March of 2001.

22. Nevertheless, and despite its own prior breach of the parties' agreement, Kmart purportedly "notified" RenGroup on April 3, 2001, that Kmart would "take over and complete" RenGroup's demolition and earthwork.

23. RenGroup protested Kmart's self-declared right to take over this work.

24. Kmart responded by demanding that RenGroup removal all of its equipment and construction trailers from the Kmart Parcel or Kmart would remove it involuntarily.

25. On April 6, 2001, Kmart formally "notified" Site that Kmart had "taken over" the demolition and earthwork and that Site was to perform no further work for RenGroup "as is contracted to Site Development".

26. In this manner, Kmart continued its illegal and unethical interference with RenGroup's contractual relations with Site and discouraged Site from further performance of its contract with RenGroup.

27. Kmart's gross violation of RenGroup's contractual rights as well as RenGroup's right to enjoy and develop RenGroup's Wetlands and Golf Course is characteristic of Kmart's dealings with adjoining land owners.

28. Kmart has established a pattern of trespass, interference and adverse possession of adjoining lands whenever the existing contractual and real interests of adjoining land owners was inconvenient to Kmart's retail strategies.

29. Kmart thereafter, in violation of its agreement with RenGroup, continued negotiations for a new contract with Site to perform the earthwork on both the Kmart Parcel and the Wetlands and Golf Course. Kmart did not bid out the work and, at all times knew that Site's opportunity to renegotiate its contract during construction would only encourage Site to demand a grossly inflated price for the work.

30. In addition, Kmart relied entirely on Site's self-serving interpretation of its contract with RenGroup, including what was within the scope of Site's work under the Contract.

31. Kmart and Site then entered a contract increasing the price charged by Site from \$679,000.00 under the RenGroup contract to \$919,171.00. In addition, Kmart allowed Site to contractually limit its work and charge as "extras" extensive amounts of work that were within the fixed price of the RenGroup contract.

32. Kmart thereafter used its contract with Site to obtain work far outside of the scope of the agreements between Kmart and RenGroup. Upon information and belief, Kmart thus furthered its strategy to force RenGroup to pay for portions of work retained by Kmart and to allow Kmart to alter its plans during its design-build project.

33. From April of 2001 until November of 2001, Kmart and Site refused to account in any way for the work performed at the Kmart Parcel (and the Wetlands and Golf Course).

34. Kmart also entirely excluded RenGroup's engineers from the Kmart parcel — despite RenGroup's repeated requests for access — in order to prevent RenGroup from monitoring and recording the work of Site.

35. RenGroup's work at the Kmart site and the Wetlands and Golf Course was secured by a promissory note ("Note") from Kmart to RenGroup in the amount of \$1.16 Million — which was withheld by Kmart from the purchase price for the Kmart Parcel.

36. RenGroup repeatedly requested that Kmart release the sum of \$356,000.00 to RenGroup, which represents the difference between the \$1.16 Million Note and the contract prices RenGroup had with Dore and site for the demolition and earthwork.

37. Even as Kmart was refusing to account for Site's work and refusing to allow RenGroup's engineers access to the Kmart Parcel, it was also refusing to release any sums due RenGroup under the promissory note.

38. Finally, in November of 2001, eight (8) months after its unilateral takeover of the work, Kmart claimed that it had incurred expenses in excess of \$2.0 Million to complete the earthwork originally contracted by RenGroup with Site for \$679,000.00.

39. RenGroup has no obligation to pay, under any circumstances, sums in excess of the Note to Kmart.

40. Kmart has never accounted for the sums it claims to have spent on this earthwork. Instead, only within the past six (6) weeks, Kmart has forwarded documentation showing only quantities of earth moved, not where they were moved or from, nor why they were moved. Upon information and belief, Kmart never maintained a proper accounting for any of the earthwork involved, because it chose to conceal work done outside of the scope of its agreements with RenGroup.

41. Kmart has never released the balance of sums due RenGroup under the Note.

42. Instead, during November of 2001, Kmart continued to conceal the scope of its activities with Site while inducing RenGroup to forgo litigation and negotiate an amicable resolution of their dispute.

43. In the midst of those negotiations, with no warning to RenGroup and with no immediate reason for doing so, Kmart commenced litigation and wrongfully claimed proper venue in the Oakland County Circuit Court.

### **COUNT I — BREACH OF CONTRACT**

44. RenGroup restates and incorporates by reference each of the preceding paragraphs of its Counter-Complaint in this Count I.

45. RenGroup is a party to the Note executed by Kmart for the benefit of RenGroup.

46. The amount due and owing to RenGroup pursuant to the Note is now \$356,800.00, exclusive of costs and attorney fees.

47. Kmart, in breach of contract, has refused to release the sum due and owing to RenGroup under the Note.

WHEREFORE, Counter-Plaintiff RenGroup respectfully requests a judgment in the amount of \$356,000.00, together with costs and attorney fees and all further relief to RenGroup that this Court finds just and equitable.

## COUNT II — TORTIOUS INFERENCE WITH CONTRACT

48. RenGroup restates and incorporates by reference each of the preceding paragraphs of this Counter-Complaint in this Count II.

49. Kmart, in breach of its agreements with RenGroup, intentionally interfered with RenGroup's contractual relations with Site.

50. Kmart's interference was carried out through a series of illegal and unethical acts with the deliberate intention of inducing Site to breach its contract with RenGroup.

51. Kmart's interference was carried out with the intention of Kmart to enter a new contract with Site to perform work outside of its contract with RenGroup and outside of RenGroup's agreements with Kmart and to attempt to have that work done at RenGroup's expense.

52. Kmart's interference was carried out with the intention of Kmart to remove RenGroup as a contractor with Site and thereby further Kmart's design-build strategy without accountability for its ever-evolving plans and specifications.

53. Site has in fact performed extensive work outside of RenGroup's agreement with Kmart and Kmart has attempted to force RenGroup to pay for that work.

54. In the course of this scheme, Kmart has actively concealed the nature of Site's work and refused to account for work purportedly done by Site within the scope of RenGroup's agreement with Kmart.

55. Kmart illegally and unethically interfered by issuing an improper notice of default to RenGroup, discussing Site's work for RenGroup with Site, and finally by brazenly ordering Site to stop all work and thereby breach its contract with RenGroup.

56. As a result of Kmart's interference, RenGroup has suffered damages, including but not limited to:

- a) delays in the completion of its work on the Wetlands and Golf Course;
- b) inability to complete documentation and negotiation of construction loans and permanent financing for RenGroup's Wetlands and Golf Course;
- c) Kmart's failure to release sums due under the Note; and
- d) damage to RenGroup's business reputation.

WHEREFORE, RenGroup respectfully requests a judgment for compensable damages against Kmart in an amount in excess of \$1.0 Million and for exemplary damages in excess of \$10.0 Million, together with costs, attorney fees and all further relief to RenGroup that this Court finds just and equitable.

BARRIS, SOTT, DENN & DRIKER, P.L.L.C.

By:



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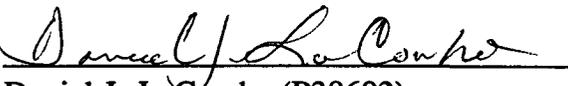
(313) 965-9725

Dated: December 26, 2001

**DEMAND FOR JURY**

RenGroup Development, Inc., by counsel, hereby relies upon the jury demand of Kmart Corporation and demands a jury on all claims so-triable in its Counter-Complaint.

**BARRIS, SOTT, DENN & DRIKER, P.L.L.C.**

By:   
Daniel J. LaCombe (P38602)

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Dated: December 26, 2001

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Bloomfield Hills, Michigan 48304-5151, by enclosing said documents in a postage prepaid envelope, addressed as above, and depositing same in a U.S. Mail receptacle at Detroit, Michigan.

  
Peggy L. Darnell

Subscribed and sworn to before me  
this 26th day of December, 2001

  
Janice A. Michaels  
Notary Public, Wayne County, Michigan  
My commission expires: 8/13/03

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