

02-544-CD
WOODS CONSTRUCTION, INC. -vs- KMART CORPORATION

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY,
COMMONWEALTH OF PENNSYLVANIA

WOODS CONSTRUCTION, INC., a Michigan
Corporation,

CLAIMANT,

v.

KMART CORPORATION a Michigan
Corporation,

OWNER.

2002-544-CO
Number ____ of 2002-M.L.

Type of Case: MECHANIC'S LIEN

Type of Pleading: Mechanic's Lien Claim

Filed on Behalf of: CLAIMANT

Counsel of Record for CLAIMANT:

John M. Ingros

Pa. Sup. Ct. I.D. #70430

97 North Gilpin Street

P.O. Box 15

Punxsutawney, PA 15767

(814)-939-7433

FILED

APR 08 2002

013120/10
William A. Shaw PD
Prothonotary
4 CNT TO ATTORNEY BY ATTORNEY

**IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA**

WOODS CONSTRUCTION, INC.,
a Michigan Corporation,

CLAIMANT

v.

KMART CORPORATION,
a Michigan Corporation,

OWNER.

No. ____ of 2002 M.L.

MECHANICS' LIEN CLAIM

WOODS CONSTRUCTION, INC., (hereafter "Claimant"), files this Mechanics' Lien claim against KMART CORPORATION, (hereafter "KMART"), Owner, and against the building hereinafter described and the curtilage appurtenant thereto, for a debt due Claimant, as Contractor.

The following is a statement of Claimant's claim:

1. Claimant is Woods Construction, Inc., a Michigan corporation having a principal address at 34650 Klein Road, Fraser, Michigan 48026.
2. Claimant files this claim as Contractor.
3. Kmart Corporation is a Michigan corporation having an address (for purposes of this claim) at 3100 West Big Beaver Road, Troy, Michigan 48084.
4. At all times relevant hereto, Kmart was tenant under a lease with Gumberg Associates - Sandy Plaza, a Pennsylvania Limited Partnership, which Claimant believes to be the current or past agent of the Fee Owner or Reputed Fee Owner of a 4.94 acre (more or less) parcel of land (hereafter "Property") situate along the western right-of-way of Township Route 811, Sandy Township, Clearfield County, Pennsylvania. The Tax Assessment Number for the premises is 128-C3-0058, and

the same is more fully described in that certain Memorandum of Ground Lease dated March 8, 1991 and recorded on September 6, 1991 in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania at Volume 1417, Page 204. A legal description of the property is attached hereto as Composite Exhibit A, which includes the legal description recorded with the aforementioned Memorandum of Ground Lease as well as the legal description provided to Claimant by Kmart.

Subsequent to the date of the Ground Lease between Gumberg Associates - Sandy Plaza and Kmart, Claimant believes the fee Property was conveyed to the Clearfield County Industrial Development Authority (hereafter "CCIDA") by deed dated July 9, 1981 and recorded in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania at Volume 816, Page 424. CCIDA is the present fee owner of the Property.

5. A typical Kmart retail store is erected upon the Property (hereafter "Leasehold Improvement").
6. Prior to November 5, 2001, Claimant and Kmart entered into a written contract whereby Claimant agreed to provide labor and materials in connection with making substantial additions and/or material adaptations to an existing pharmacy facility located within the Leasehold Improvement.
7. A description of the labor and materials provided by Claimant in performing its work is set forth in the Contractor's Proposal to Kmart Corporation, dated January 10, 2002 and attached hereto as Exhibit B.
8. Pursuant to the terms of Exhibit B, Kmart agreed to pay Claimant \$39,802.24 upon completion of the work described in the said Exhibit.
9. Claimant commenced its work under the contract on November 5, 2001 and completed the same on December 10, 2001.

10. Kmart has failed to make full payment to Claimant in accordance with the parties' contract, there being \$38,482.24 remaining due and owing thereunder.
11. This lien is claimed against the leasehold interests of Kmart in the Property and its interest in the Leasehold Improvements.

WHEREFORE, Claimant requests that this Honorable Court enter a mechanics' lien claim against Kmart's leasehold interest in the Property herein described, as well as against Kmart's interest in the Leasehold Improvements erected thereon, in the amount of \$38,482.24, plus costs and such other relief as this Court deems just and proper.

Respectfully submitted,



John M. Ingros, Esq.
Attorney for Claimant

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF LEASE dated this 8th day of March, 1991, between GUMBERG ASSOCIATES-SANDY PLAZA, a Pennsylvania limited partnership, having an address at Brinton Executive Center, 1051 Brinton Road, Pittsburgh, Pennsylvania 15221 (herein referred to as "Landlord") and KMART CORPORATION, a Michigan corporation, having an address at 3100 West Big Beaver Road, Troy, Michigan 48064 (herein referred to as "Tenant").

WITNESSETH:

That in consideration of the rents, covenants and conditions more particularly set forth in a certain lease between Landlord and Tenant do hereby covenant, promise and agree as follows:

1. Demised Premises. Landlord does demise unto Tenant and Tenant does take from Landlord for the term hereinafter provided, and any extension thereof, the following property: the land described as Parcel A on Exhibit A and depicted on Exhibit B, attached hereto and made a part hereof, situate in the Township of Sandy, County of Clearfield, Commonwealth of Pennsylvania.

Said land together with the licenses, rights, privileges and easements herein set forth, shall be hereinafter collectively referred to as the "demised premises". The demised premises are a part of a shopping center located on land described as Parcel B on Exhibit A.

2. Term. The term of this lease shall commence on the date hereof and shall terminate on May 15, 2007, provided, however, Tenant shall have the option to extend the lease term for ten (10) successive periods of five (5) additional years each.

3. Building Areas. Landlord covenants, during the period commencing with the date of execution of aforesaid lease and ending upon the last day of the lease term and any extension or renewal thereof, that it will not erect or construct any buildings or other structures upon land described in Exhibit A, except as shown on Exhibit B.

The sole purpose of this instrument is to give notice of said lease and all its terms, covenants and conditions to the same extent as if said lease were fully set forth herein.

DUBOIS AREA SCHOOL DISTRICT

1% REALTY TRANSFER TAX

AMOUNT \$ 1213.52

PAID 9-6-91 BY R. LITTLE
Date Agent

CLEARFIELD COUNTY
ENTERED OF RECORD
TIME 10:05 AM 9-6-91
BY [Signature]
FEE \$ 14.50
Michael E. [Signature]
Agent

Composite EX "A"

The conditions, covenants and agreements contained in this instrument shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors and assigns. All covenants and agreements of this instrument and said lease shall run with the land.

IN WITNESS WHEREOF, the parties hereto have executed these presents in triplicate and fixed their seals hereto as of the day and year first above written.

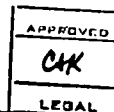
WITNESSES:

GUMBERG ASSOCIATES-SANDY PLAZA

Patty E. Krasner
Clifford A. Hany

By: Stanley R. Gumberg, General Partner

Attest: _____ Secretary



KHART CORPORATION

By: Dean M. Jemelly
Nancy Boborich

Attest: Michael J. All Vice President
C. S. [Signature] Assistant Secretary

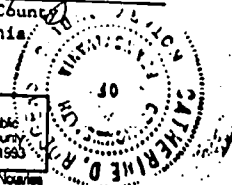
ACKNOWLEDGEMENTS

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ALLEGHENY) SS.

The foregoing instrument was acknowledged before me this 8th day of March, 1991 by Stanley R. Gumberg, the General Partner of GUMBERG ASSOCIATES-SANDY PLAZA, a Pennsylvania limited partnership, on behalf of the partnership.

Catherine D. Rodgers
Notary Public, Allegheny County
Commonwealth of Pennsylvania
My commission expires:

Notary Seal
Catherine D. Rodgers, Notary Public
Bridgetown Hills, Allegheny County
My Commission Expires Dec. 13, 1993
Member, Pennsylvania Association of Notaries



STATE OF MICHIGAN)
) SS.
 COUNTY OF OAKLAND)

I do hereby certify that on this 6th day of June, 1991, before me, Deborah Danks, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared M. Shilun and C. L. L. L., known to me to be the President and Secretary of KUART CORPORATION, who, being by me duly sworn, did depose and say that they reside in Rochester, Mich. and Birmingham, Mich., respectively; that they are the President and Secretary of KUART CORPORATION, the corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its and their free and voluntary act; and that they signed their names thereto by like order.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Deborah Danks
 Notary Public, Oakland County,
 State of Michigan
 My Commission Expires:

DEBORAH DANKS
 Notary Public, Oakland County, Mich.
 My Commission Expires January 10, 1994

EXHIBIT APARCEL A:

Beginning at a point, said point being South 23°35'00" West 133.00 feet, South 66°25'00" East 420.75 feet and South 23°35'00" West 41.5 feet from the northwest corner of the Shopping Center property on the westerly line of Shaffer Road, a 50 foot street; thence from the true point of beginning at the northeast corner of existing Kmart building, and through the land of which this was a part South 66°25'00" East 125.00 feet to a point; thence South 23°35'00" West 224.00 feet to a point; thence North 66°25'00" West 125.00 feet to the southeast corner of the existing Kmart building; thence along the easterly line of said Kmart building North 23°35'00" East 224.00 feet to a point, the place of beginning.

SANDY PLAZA

LEGAL DESCRIPTION

ALL that certain piece or parcel of land situate, lying and being in Sandy Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin on the westerly right of way line of Township Rt. 811, said pin being located a distance of 292.53 feet North 23° 35' East of the centerline of State Rt. 255; thence North 23° 35' East along the Western right of way line of Township Route 811 a distance of 369.5 feet to an iron pin at the Southwest corner of other lands of the Grantors also being conveyed this date to the Grantee; thence South 66° 25' East along said other lands of the Grantors a distance of 348 feet to a point; thence North 23° 35' East along said other lands of the Grantors a distance of 288 feet; thence South 66° 25' East along said other lands of the Grantors a distance of 35 feet; thence North 23° 35' East along other lands of the Grantors a distance of 9 feet; thence South 66° 25' East along said other lands of the Grantors a distance of 37.75 feet; thence North 23° 35' East along said other lands of the Grantors a distance of 265.5 feet to a point; thence North 66° 25' West along said other lands of the Grantors a distance of 420.75 feet to an iron pin on the Western right of way line of Township Route 811; thence North 25° 35' East along the Western right of way line of Township Route 811 a distance of 133 feet to an iron pin at the Southwest corner of lands of The Alpha Environmental Mining Corp.; thence South 66° 25' East along lands of The Alpha Environmental Mining Corp. a distance of 750 feet to an iron pin on the Western line of lands of the Morningside Cemetery Association; thence South 23° 35' West along lands of the Morningside Cemetery Association a distance of 725.10 feet to an iron pin at the Northeast corner of lands of the Clearfield County Industrial Development Authority (Bonanza Restaurant); thence South 84° 35' 39.4" West along lands of the Clearfield County Industrial Development Authority a distance of 150 feet to an iron pin; thence South 6° 10' 16.8" West along lands of the Clearfield County Industrial Development Authority, a distance of 394.02 feet to a nail in the centerline of State Route 255; thence along the centerline of State Route 255 North 89° 5' 04.2" West on a cord to the right 40' to a point at the Southeast corner of lands of the Alpha Environmental Mining Corp.; thence North 6° 10' 16.8" East along lands of The Alpha Environmental Mining Corp. a distance of 166.36 feet to an iron pin; thence North 66° 25' East along lands of the Alpha Environmental Mining Corp. a distance of 251.09 feet to an iron pin; thence South 54° 15' 19.4" West along lands of the Alpha Environmental Mining Corp. a distance of 22.73 feet to an iron pin; thence South 9° 15' 19.4" West along lands of The Alpha Environmental Mining Corp. a distance of 241 feet to a point in the centerline of State Route 255; thence along the centerline of State Route 255 North 82° 31' 31.1" West on a long cord to the right 160 feet to a point at the Southeast corner of other lands of The Alpha Environmental Mining Corp.; thence North 10° 40' 44.3" East along lands of The Alpha Environmental Mining Corp. a distance of 239.688 feet to an iron pin; thence North 66° 25' West along lands of The Alpha Environmental Mining Corp. a distance of 227.596 feet to an iron pin on the Western right of way line of Township Route 811 at the place of beginning. Containing 13.01 Acres, more or less, as surveyed by Lee-Simpson Associates, Inc.

EXHIBIT "A"

ALL that certain piece or parcel of land situate, lying and being in Sandy Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin on the Western right of way line of Township Route 811, said pin being located North 23° 35' East a distance of 662.03 feet from the centerline of State Route 255; thence South 66° 25' East along other lands of the Grantors also being conveyed this date to the Grantee a distance of 348 feet to a point; thence North 23° 35' East along said other lands of the Grantors a distance of 288 feet; thence South 66° 25' East along said other lands of the Grantors a distance of 35 feet; thence North 23° 35' East along said other lands of the Grantors a distance of 9 feet; thence South 66° 25' East along said other lands of the Grantors a distance of 37.75 feet; thence North 23° 35' East along said other lands of the Grantors a distance of 265.5 feet to a point; thence North 66° 25' West along the said other lands of the Grantors a distance of 420.75 feet to an iron pin on the Western boundary of the larger tract out of which this parcel is conveyed, which is along a projection of the Western boundary of Township Route 811; thence South 23° 35' West along a projection of the Western right of way line of Township Route 811 a distance of 562.5 feet to the place of beginning. Containing 4.94 Acres more or less, as surveyed by Lee-Simpson Associates, Inc. its successors and assigns, and that no such heading, air course, water course or gangway shall be of a greater width than sixteen (16) feet with pillars not less than forty (40) feet between each such heading, air course, water course or gangway it being distinctly understood and agreed that Buffalo & Susquehanna Coal & Coke Company herein, its successors and assigns, shall not at any time remove any coal from the premises except on the terms herein stated and for the purposes herein stated. Said party of the second part does hereby release, quitclaim and forever discharge Buffalo & Susquehanna Coal & Coke Company, its successors and assigns, of and from all and every claim for damages for injury to the lands and the waters thereon, therein and under the same, and the buildings now or hereafter erected thereon, and the rights, uses and improvements thereof, that may be caused by operations presently on the property or that may hereafter be caused by the exercise of any of the rights herein reserved, upon the terms and conditions hereof.

STATE OF PENNSYLVANIA:
COUNTY OF CLEARFIELD: SS

RECORDED in the Recorder's Office in and for said County on this 1st day of September 1991.

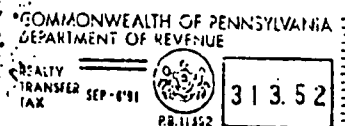
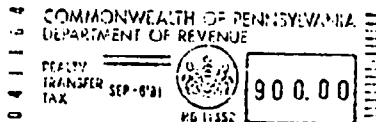
County in Deeds and Taxes Book No. _____

Page 204 etc.

WITNESS my hand and seal of office this

6th day of Sept A.D. 1991

Michael R. Lytle



My Commission Expires
First Monday in January, 1992

4733

K MART PARCEL

ALL that certain piece or parcel of land situate, lying and being in Sandy Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin on the Western right of way line of Township Route 811, said pin being located North 23° 35' East a distance of 662.03 feet from the centerline of State Route 255; thence South 66° 25' East along other lands of the Grantors also being conveyed this date to the Grantee a distance of 348 feet to a point; thence North 23° 35' East along said other lands of the Grantors a distance of 288 feet; thence South 66° 25' East along said other lands of the Grantors a distance of 35 feet; thence North 23° 35' East along said other lands of the Grantors a distance of 9 feet; thence South 66° 25' East along said other lands of the Grantors a distance of 37.75 feet; thence North 23° 35' East along said other lands of the Grantors a distance of 265.5 feet to a point; thence North 66° 25' West along the said other lands of the Grantors a distance of 420.75 feet to an iron pin on the Western boundary of the larger tract out of which this parcel is conveyed, which is along a projection of the Western boundary of Township Route 811; thence South 23° 35' West along a projection of the Western right of way line of Township Route 811 a distance of 562.5 feet to the place of beginning. Containing 4.94 Acres more or less, as surveyed by Lee-Simpson Associates, Inc.

BEING part of the premises conveyed by Buffalo & Susquehanna Coal & Coke Company to Morningside Cemetery Association by deed dated December 27, 1938, recorded in the office of the Recorder of Deeds of Clearfield County, Pennsylvania on February 20, 1939 in Deed Book 325, Page 11.

EXHIBIT "A"

K 1

Contractor's Proposal to Kmart Corporation

Execute in Triplicate

Order No. _____
 Authorization No. _____
 Date 01/10/2002

Store Address or Stamp

Kmart #9733
 Dubois, PA

Project: Pharmacy Re-Opens & Remodel

Mr. P.D. Fryer

Proposal: For and in consideration of the sum to be paid us by Kmart Corporation on the contract basis hereinafter mentioned, we will furnish all labor and material and do all work and agree to all conditions as called for in the Specifications dated _____

Drawings Numbered Store specific before and after drawings.

as prepared by Kmart Corporation, this Proposal and the Bidding Instructions dated N/A (the "Contract Documents"), all of which are hereby incorporated by reference and made part hereof.

Contract Basis: (Indicate Lump Sum or Time and Material Terms) TIME AND MATERIAL

We will start work within _____ days from date of award, and will complete same as follows
Work complete at time of contract issue

Itemization: (necessary to consideration of proposal)

Furnish all necessary labor & materials to complete the Pharmacy remodel as per the drawings & specifications listed above.

1. Pharmacy Expansion	Carpentry	06000	\$9,845.00
	Electrical	16000	\$7,056.00
	Painting	09900	\$1,055.00
2. Existing Pharmacy Reworks	Carpentry	06000	\$5,700.00
	Electrical	16000	\$7,056.00
	Painting	09900	\$1,055.00
3. Pharmacy Refixturing		06001	\$2,745.00
4. Pharmacy Lan Drops New ____ x \$ ____ Per Drop.		16000	
Relocated ____ x \$ ____ Per Drop.		16000	
5. Electrical Room Demo & Panel Relocations.		16000	
6. Remove existing & relocate side exit doors for Pharmacy Expansion.		08305	\$500.00
7. Install Kmart supplied carpet squares throughtout interior Pharmacy area.		06000	\$210.00
8. Other	Sprinklers	13900	\$966.54
	Plumbing	15400	\$614.70
9. General Conditions		01000	\$1,103.00
10. Contractors OH & P		01001	\$1,896.00
Taxes (if applicable)			
Total			\$39,802.24

Kmart Corporation
 Construction Department

Contractor: Woods Construction, Inc.

By John Bodary Date 01/10/2002

John Bodary, President

Type Name and Title

Address 34650 Klein Rd.

City Fraser State MI Zip 48026

Phone No. (810) 296-9550 Fax (810) 296-9000

Tax ID # _____

Vendor ID # _____

Accepted _____ Regional Office

By Mr. P.D. Fryer 20 02

Director of Special Projects

Type Name and Title

**This Proposal is Subject to and Governed By
 the Terms and Conditions on Reverse Side**

EX "B"

Terms and Conditions

PERMITS AND INSPECTIONS: Contractor shall secure any and all permits and/or inspections required by all applicable federal, state and local codes, rules, regulations, ordinances and statutes ("Applicable Laws"). Certificates of inspection shall be furnished to Kmart in all cases where permits are required. The cost of such permits and/or inspections shall be included in Contractor's final invoice to Kmart with the applicable receipts attached thereto, and the costs shall not be subject to Contractor's percentage charges for overhead and profit.

EXAMINATION OF THE PREMISES: By this accepted Proposal ("Contract") it is acknowledged that the Contractor is familiar with the construction site, is satisfied as to all matters necessary for carrying out the work and the character of the site has been taken into account in submitting this bid. No allowance or extra payment will be made on account of any costs, expenses, delays or other matters incurred in connection with the character of the site or occasioned by Contractor's failure to become familiar with said site or on account of any error or oversight on Contractor's part.

NO DISCRIMINATION: Contractor agrees that no person with responsibilities in the operation of this Contract will discriminate with respect to any subcontractor, employee or applicant for participation in this project because of race, creed, color, national origin, sex or age.

LIABILITY AND WORKERS' COMPENSATION INSURANCE: Contractor shall maintain comprehensive general liability insurance with limits of not less than \$1,000,000 per occurrence or \$2,000,000 aggregate which shall include, but not be limited to, contractual liability. Contractor shall also maintain comprehensive automobile liability coverage with a combined single limit of not less than \$1,000,000, workers' compensation insurance as required by Applicable Laws and employers liability coverage with limits of not less than \$500,000. Contractor shall include Kmart as an additional named insured in connection with all coverages and shall provide Kmart with a certificate of insurance evidencing same and the required coverages.

CONTRACTOR'S INDEMNIFICATION: To the fullest extent permissible under Applicable Laws: Contractor shall reimburse, indemnify, hold harmless and defend Kmart, its employees, agents, servants, landlords and representatives from and against any and all losses, damages, expenses, claims, suits and demands of whatever nature, including those resulting from damages or injuries, including death, to any property or persons, caused by or arising out of any action, omission, breach or operation under the Contract or in connection with the work attributable to the Contractor, any subcontractor, any material supplier, any of their respective employees, agents, servants and representatives, or any other person, including Kmart, its employees, agents, servants and representatives; provided, however, that the Contractor shall not be required to indemnify Kmart, its employees, agents, servants and representatives hereunder for any damages or injuries, including death, to any property or persons, caused solely and exclusively by the negligence of Kmart, its employees, agents, servants and representatives.

WORKMANSHIP AND GUARANTEES: Contractor warrants that the performance of all work and the entire installation will be in accordance with (1) good construction practice, (2) the Contract Documents, and (3) Applicable Laws. Contractor shall guarantee all work to be free from defects in material and workmanship for a period of one (1) year unless otherwise noted on the Contract Documents.

SAFETY REQUIREMENTS: Contractor shall keep all oily and/paint-soaked rags in metal containers and must remove same at the completion of each day's work.
CONTRACTOR SHALL NOT PERMIT SMOKING IN ANY BUILDING SUBJECT TO THIS CONTRACT.

TAXES: All taxes are included in the bid, including federal, state, county and municipal excise, gross receipts, sales, use of other taxes now in force, payroll taxes, contributions for employment insurance, old age pensions (including Social Security) or annuities. Sales and use taxes apply to MATERIAL ONLY, unless otherwise specified by Applicable Laws.

CONTRACTOR'S INVOICES: Contractor's invoices must include: (1) total cost of labor, (2) total cost of materials, (3) sales tax, (4) Contractor's profit, (5) grand total, (6) authorized extras, if any (must be authorized in writing by Kmart), and (7) supporting documents. Invoices must be submitted to the designated Kmart Office. Where the amount of the Contract exceeds \$5000 or upon request of Kmart, Contractor's final invoice shall be accompanied by Contractor's Sworn Statement indicating that all indebtedness is paid in full, Contractor's final waiver of lien and final unconditional waivers of liens from all subcontractors and suppliers. Further, such lien waivers are required from anyone having previously asserted lien rights or provided an intent to assert such rights. Contractor's invoices for partial payment shall be accompanied by Contractor's Sworn Statement setting forth the amounts due to its laborers, subcontractors and suppliers. Contractor's indebtedness shall not exceed 20% of current gross invoice plus any amounts previously withheld.

ASSIGNMENTS: Contractor agrees that this Contract shall not be assigned and any monies due hereunder shall not be assigned unless approved in writing by Kmart. All assigned invoices shall be accompanied by Sworn Statements and Waivers of Liens as described in the previous paragraph.

TERMS OF PAYMENT: Net 30 days unless otherwise agreed to in writing by Kmart. For all contracts exceeding \$5,000, payment will be made as follows: on or about the twentieth day of each month, ninety percent of the value of the work completed up to the end of the previous month, less the aggregate of previous payments; on substantial completion of the entire work a sum sufficient to increase the total payments to ninety percent of the Contract price; and thirty days thereafter, provided the work is fully completed and the Contract fully performed, the balance due under the Contract. Kmart reserves the right to make payments to Contractor in the form of checks payable jointly to Contractor and to any of its subcontractors or suppliers that may have the right to assert a claim of mechanics lien against the premises. Kmart may offset against payments required under this Contract any monetary obligation from Contractor to Kmart, whether the obligation arises out of this Contract or otherwise.

DEVIATION FROM CONTRACT DOCUMENTS: Any and all deviations from the Contract Documents must be agreed to in writing by Kmart.

RESPONSIBILITY TO UPDATE PLANS: Contractor shall update the subject building plans to show any and all changes in arrangement or layout of store fixture or deviation to the drawings and return all drawings to the Kmart representative.

TERMINATION/COMPLETION: If the Contractor should neglect or refuse or fail to supply enough properly skilled workmen or proper material, fail in any respect to diligently prosecute the work under Contract, fail to make prompt payment to subcontractors, materialmen or laborers, disregard Applicable Laws, the instruction of Kmart or otherwise be guilty of a material breach of the Contract, then Kmart may without prejudice to any other right or remedy, after giving Contractor forty-eight (48) hours notice, terminate the Contract. In the event Kmart shall terminate the Contract, it shall have the right to take possession of the site and all materials and plant thereon and to employ any other person or persons necessary to finish the work either on a fixed sum contract basis or percentage basis or a combination of the two, whichever in the opinion of Kmart shall be advisable. In case of such termination, Contractor shall not be entitled to receive any further payment under the Contract until the said work shall be wholly finished, at which time, if the unpaid balance of the amount to be paid under the Contract shall exceed the expense incurred by Kmart in finishing the work, plus 15%, such excess shall be paid by Kmart to Contractor. If such expense shall exceed the unpaid balance, Contractor shall pay the difference thereof plus 15% to Kmart. Kmart reserves the right to terminate this Contract with forty-eight (48) hours notice at any time it determines it does not wish to proceed with the project or with Contractor. In such event, Contractor shall be paid for such portions of the work as have been completed and for materials which have been provided, fabricated or delivered up to the date of termination, no allowance being made for anticipated profit on that portion of the work not completed.

TIME OF COMPLETION: Contractor shall execute the work with all diligence and expedition consistent with personal and public safety and with the approved schedule and completion date, recognizing that TIME IS OF THE ESSENCE OF THIS CONTRACT. Contractor shall not be entitled to any extension of the completion date unless required due to catastrophic weather conditions or the intentional act or omission of Kmart, in no event shall Contractor be entitled to an increase in the Contract price or damages of any nature arising out of project delay, however caused.

INDEPENDENT CONTRACTOR: Contractor is, and at all times shall remain, an independent contractor in performance of this Contract.

**IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY,
COMMONWEALTH OF PENNSYLVANIA**

WOODS CONSTRUCTION, INC., A MICHIGAN CORPORATION,

CLAIMANT,

v.

Number of 2002 ML

KMART CORPORATION, A MICHIGAN CORPORATION,

OWNER

VERIFICATION

VERIFICATION

I, ROBERT V. ZIMMERMAN, CONTRACTOR of Woods Construction, Inc., a Michigan corporation, verify that the statements made in the foregoing pleading are true and correct to the best of my knowledge, information and belief. I further state that I have authority to sign this document on behalf of the corporation. I understand that false statements are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

4,3,02

Date

13 in

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY,
COMMONWEALTH OF PENNSYLVANIA

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KMART CORPORATION a Michigan
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Number 544 of 2002 C.D.

Type of Case: MECHANIC'S LIEN

Type of Pleading: CERTIFICATE OF
SERVICE

Filed on Behalf of: CLAIMANT

Counsel of Record for CLAIMANT:

John M. Ingros

Pa. Sup. Ct. I.D. #70430

97 North Gilpin Street

P.O. Box 15

Punxsutawney, PA 15767

(814)-939-7433

FILED

APR 26 2002

mjs:49/no cc
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY,
COMMONWEALTH OF PENNSYLVANIA

WOODS CONSTRUCTION, INC., A MICHIGAN
CORPORATION,

CLAIMANT,

v.

Number 544 of 2002 CD

KMART CORPORATION, A MICHIGAN
CORPORATION,

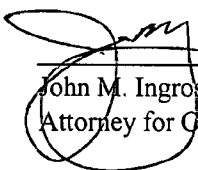
OWNER.

NOTICE OF FILING OF MECHANIC'S LIEN CLAIM

To: **Kmart Corporation**
3100 West Big Beaver Road
Troy, Michigan
48084

Kmart #9733
Route 255 N
DuBois, Pennsylvania
15801

You are notified that a mechanic's lien claim in the amount of \$38,482.24 has been filed on behalf of Woods Construction, Inc. against the Kmart property at Route 255 N, Dubois, PA 15801, of which you are the owner or reputed owner. The claim was filed on April 8, 2002, in the Court of Common Pleas of Clearfield County, Pennsylvania at No. 544 of 2002 CD. A copy of the claim is attached.


John M. Ingros
Attorney for Claimant

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY,
COMMONWEALTH OF PENNSYLVANIA

WOODS CONSTRUCTION, INC., A MICHIGAN
CORPORATION,

CLAIMANT,

v.

Number 544 of 2002 CD

KMART CORPORATION, A MICHIGAN
CORPORATION,

OWNER.

CERTIFICATE OF SERVICE

I, John M. Ingros, Attorney for Claimant, hereby certify that on the 22nd day of April, 2002, I caused a true and correct copy of the **Notice of Mechanics' Lien Claim and a certified copy of the said Claim** to be served on the following person(s), in the manner listed below, at the following address(es):

By Hand Delivery (see attached Constable Return), Pursuant to 49 Pa.C.S.A. § 1502(c), to:

Bryant McAninch
Kmart Store Manager
Rte 255 North
DuBois, PA 15801

Courtesy Copy by U.S. First Class Mail, Postage Pre-paid, to:

Kmart Corporation
3100 West Big Beaver Road
Troy, MI 48084

By: John M. Ingros, Esq.

PAUL J. PAPE
CONSTABLE
MEMBER OF PA. STATE CONSTABLES
705 Pine Street
Punxsutawney, Pa. 15767

CONSTABLE RETURN

This will affirm that on the 22nd day of April, 2002
I, the undersigned, did serve upon Bryant McAninch - ^{K-Mart} store manager, A
Mechanics Lien Claim at 255 North, Dubois, Pa
5:10 ~~A.M.~~ P.M.

Paul J. Pape
PAUL J. PAPE

Sworn and subscribed before me this 24 day of April, 2002

[Signature]

NOTARY PUBLIC

Notarial Seal
John M. Ingros, Notary Public
Punxsutawney Boro, Jefferson County
My Commission Expires Nov. 22, 2003
Member, Pennsylvania Association of Notaries

COSTS:

NO. Services 25⁰⁰

Additional Defendant _____

Deputy _____

Return 25⁰⁰

80 Miles @ \$. 365 /Mi 29²⁰

Hours @ \$10.00/Hr _____

TOTAL 56⁷⁰

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY,
COMMONWEALTH OF PENNSYLVANIA

WOODS CONSTRUCTION, INC., a Michigan
Corporation,

CLAIMANT,

v.

KMART CORPORATION a Michigan
Corporation,

OWNER.

Number 544 of 2002 C.D.

Type of Case: MECHANIC'S LIEN

Type of Pleading: PRAECIPE TO SATISFY
MECHANICS' LIEN CLAIM

Filed on Behalf of: CLAIMANT

Counsel of Record for CLAIMANT:

John M. Ingros

Pa. Sup. Ct. I.D. #70430

97 North Gilpin Street

P.O. Box 15

Punxsutawney, PA 15767

(814)-939-7433

FILED

JUN 11 2002

0/1:50/1m

William A. Shaw

Prothonotary

(F. Ingros)

WCC

**IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA**

WOODS CONSTRUCTION, INC.,
a Michigan Corporation,

CLAIMANT

v.

KMART CORPORATION,
a Michigan Corporation,

OWNER.

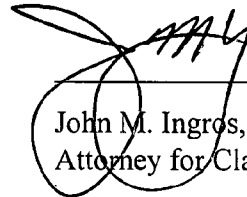
No. 544 of 2002 C.D.

Praeipce to Satisfy Mechanics' Lien Claim

To the Prothonotary:

Please enter satisfaction of the Mechanics' Lien claim in the above-captioned action, upon payment of your costs only.

Respectfully submitted,



John M. Ingros, Esq.
Attorney for Claimant

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY,
COMMONWEALTH OF PENNSYLVANIA

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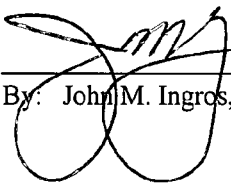
OWNER.

CERTIFICATE OF SERVICE

I, John M. Ingros, Attorney for Claimant, hereby certify that on the 11th day of June, 2002, I caused a true and correct copy of the **Praecipe to Satisfy Mechanics' Lien Claim** to be served on the following person(s), in the manner listed below, at the following address(es):

By U.S. First Class Mail, Postage Pre-paid, to:

Kmart Corporation
3100 West Big Beaver Road
Troy, MI 48084

By:  _____
John M. Ingros, Esq.