



Legislation Text

File #: 050648, **Version:** 0

050648
ORIGINAL

THE CHAIR

Resolution authorizing and approving the settlement agreement between the City of Milwaukee (“City”) and Kmart Corporation for \$44,722.15 in exchange for the amount of \$31,305.51 as full settlement regarding personal property taxes, account numbers 8471-0009 and 8471-0040 for tax year 2001, pursuant to an Amended Order Disallowing and Expunging or Otherwise Reducing or Reclassifying Certain Claims Set Forth in the Nineteenth Omnibus entered on April 12, 2004, by the United States Bankruptcy Court, for the Northern District of Illinois, Case No. 02-02474, the Hon. Susan Pierson Sonderby, presiding.

The Resolution approves and authorizes the settlement agreement between the City of Milwaukee and Kmart Corporation for \$44,722.15 in exchange for the amount of \$31,305.51 as full settlement regarding personal property taxes, account numbers 8471-0009 and 8471-0040 for tax year 2001, pursuant to an Amended Order Disallowing and Expunging or Otherwise Reducing or Reclassifying Certain Claims Set Forth in the Nineteenth Omnibus entered on April 12, 2004, by the United States Bankruptcy Court, for the Northern District of Illinois, Case No. 02-02474, the Hon. Susan Pierson Sonderby, presiding².

Whereas, On January 22, 2002 ("Petition Date"), Kmart and certain of its subsidiaries and affiliates (collectively “Kmart”) filed a voluntary petition in the United States Bankruptcy Court for the Northern District of Illinois (Eastern Division) (the "Bankruptcy Court") for reorganization relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. Sections 101, *et seq.*, as amended (the "Bankruptcy Code"). Since that time Kmart has remained in possession of its property and has continued to operate its business pursuant to Sections 1107 and 1108 of the Bankruptcy Code, eventually emerging from bankruptcy pursuant to a confirmed Plan of Reorganization which became effective May 6, 2003; and

Whereas, The City of Milwaukee (“the City”) filed Proof of Claim #4107 (“Claim”) in the Kmart’s chapter 11 cases (Case No. 02-B02474) for account numbers 8471-0009 and 8471-0040 for tax year 2001 in the amount of \$44,722.15; and

Whereas, On April 12, 2004, the Hon. Susan Pierson Sonderby signed an Amended Order Disallowing and Expunging or Otherwise Reducing or Reclassifying Certain Claims Set Forth in the Nineteenth Omnibus, reducing the claim amount to \$31,305.51; and

Whereas, Kmart and the City agree to allowance by Kmart of a non-contingent, undisputed, liquidated amount of \$31,305.51 (the "Claim Amount"), to be paid in final satisfaction of the Claim and Kmart’s pre-petition liability of any kind to the City generally; and

Whereas, Kmart and The City further agree that this amount shall be remitted by Kmart in full settlement of Kmart’s pre-petition indebtedness to the City by not later than the 60th day after the City delivers to Kmart a

fully executed and notarized copy of this agreement, which delivery shall constitute conclusive evidence of authority to enter into this settlement on behalf of The City; and

Whereas, In exchange for payment of the Claim Amount pursuant to this Agreement, the City will promptly withdraw any proofs of claim with respect to the Kmart filed with the Bankruptcy Court, including, but not limited to, the Claim; and

Whereas, The City and Kmart agree that payment of the Claim Amount constitutes full and final payment of all pre-petition liabilities of Kmart to the City, whether previously claimed or not; and

Whereas, The City further agrees that its sole remedy for such liabilities is payment of the Claim Amount pursuant to this Agreement; and

Whereas, The City agrees to promptly update its records following receipt of payment of the Claim Amount to confirm application of the Claim Amount, in full, to Kmarts' pre-petition obligations, and that pursuant to this Agreement, those obligations are, by this compromise and settlement, deemed paid in full, whether or not formally claimed; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, to discharge the in personam liability against Kmart for \$44,722.15 and accept the settlement payment of \$31,305.51 in which Kmart shall pay on/within sixty (60) days of said approval.

City Attorney
GOSC:gosc
September 2, 2005
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