

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

Case No. BKY 04-43222

In Re:

Robert J. Sheppard and
Susan J. Sheppard

**NOTICE OF HEARING AND
MOTION FOR RELIEF FROM STAY**

Debtors: Chapter 7 Case

To: The Debtors, Debtors' Attorney, Chapter 7 Trustee, United States Trustee, and the other parties in interest specified in Local Rule 9013-3.

1. Mainstreet Bank ("Movant"), a secured creditor of the Debtors herein, by its undersigned attorney, moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 2:00 p.m. on October 28, 2004, before the Honorable Gregory F. Kishel in the U.S. Courthouse, 300 S. 4th Street, Minneapolis, Minnesota, or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than October 25, 2004, which is three days before the time set for the hearing (exclusive of Saturdays, Sundays, or holidays), or filed and served by mail not later than October 19, 2004, which is seven business days before the time set for the hearing (exclusive of Saturdays, Sundays, or holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1 and other applicable rules. This

proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed June 8, 2004. The case is now proceeding in this court.

5. This Motion arises under 11 U.S.C §362 and Bankruptcy Rule 4001. This Motion is filed under Bankruptcy Rule 9014 and Local Rule 9001-1 – 9019-1(d).

6. Movant seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain real property (“Real Property”) owned by DCS Properties, LLC, a Minnesota limited liability company, and personal property (“Vehicle”) owned by RJ Sheppard Construction, Inc., a Minnesota corporation. Said entities are listed in Debtors’ Bankruptcy Petition (and as amended) as owners of property for which Debtors are or may be seeking protection from this Court. Said Real Property is owned by DCS Properties, LLC, a Minnesota limited liability company and the Vehicle is owned by RJ Sheppard Construction, Inc., a Minnesota corporation. On information and belief, Debtor Robert J. Sheppard is an owner of at least one third of the outstanding membership interests of DCS Properties, LLC and is full owner of RJ Sheppard Construction, Inc.

7. DCS Properties, LLC, a Minnesota limited liability company, executed and delivered to Movant a Promissory Note dated November 8, 2000, in the original principal amount of \$250,000.00 (“Note”). The Borrower’s performance under said Note was secured by a grant of a Mortgage executed by Borrower and delivered to Movant dated November 8, 2000 and filed for record in the office of the Anoka County Recorder’s Office on November 27, 2000, as Document Number 1536486 (“Mortgage”), and Assignment of Leases and Rents filed as Document No 1536487 (“Assignment of Rents”). The performance of DCS Properties, LLC was guaranteed by personal guarantees of Robert J. Sheppard, Todd A.

Christopherson and Raymond P. DeVine. The said Mortgage and Assignment of Rents are liens upon the following described real property, to wit:

The East one-third of Lots 1, 2 and 3, Block 9, and the East 10 feet of the West two-thirds of Lots 1, 2 and 3, Block 9, Centerville, Anoka County, Minnesota (“Real Property”).

8. The subject Real Property has an estimated fair market value (per an October 3, 2000 appraisal) of \$330,000 and has a tax year 2005 listed market value of \$183,900 on the Anoka County real estate tax records.

9. Debtors listed the said Real Property as their homestead and “exempt” in the Petition in this proceeding. Said Real Property was not the homestead of the Debtors at the time the said Note, Mortgage and Assignment of Rents were executed.

10. RJ Sheppard Construction, Inc. executed and delivered to Movant a Promissory Note dated June 5, 2003 (“Vehicle Note”) in the original principal amount of \$43,757.83. Performance of the Vehicle Note was secured by a 2003 Ford F350 truck with vehicle identification number of #1FTWW33P83EC14759 (“Vehicle”), the title to which duly identifies Movant as a secured lien holder (“Lien Card”). Said vehicle is titled in the name of RJ Sheppard Construction, Inc. Movant has a valid, perfected security interest in the Vehicle. The outstanding indebtedness owed by RJ Sheppard Construction, Inc. to Movant on the Vehicle Note as of June 8, 2004 was \$38,863.67. The estimated the fair market value of RJ Sheppard Construction, Inc.’s interest in the Vehicle is \$31,500.00.

11. The said Vehicle is in the possession of the Debtors and has been listed on Debtors Amended Petition for which they are seeking protection of this Court.

12. Copies of the Note, Mortgage, Assignment of Rents and Vehicle Note and Lien Card identified in this Notice of Hearing and Motion are attached to the Affidavit of Michael Thinesen submitted herewith.

13. Movant requests relief from the stay for cause under 11 U.S.C. §362(d)(1). DCS Properties, LLC, and Sheppard Construction, Inc. are delinquent under the terms of the original Note, Mortgage, Assignment of Rents and Vehicle Note, respectively with Movant.

14. Movant requests relief from the stay under 11 U.S.C. §362(d)(2). Movant does not have, and has not been offered, adequate protection of its interest in the Real Property or the Vehicle. The Debtors have no equity in the collateral, and the collateral is not necessary to an effective reorganization. Moreover, Debtors' failure (as well as the failure of DCS Properties, LLC and RJ Sheppard Construction, Inc.) to make payments to Movant when due, or otherwise provide Movant with adequate protection of its interest in the Real Property or the Vehicle constitutes cause, within the meaning of 11 U.S.C. Sec. 362(d)(1) entitling Movant to relief from the automatic stay.

15. Movant further requests that relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

16. Movant has incurred and will incur attorneys' fees and costs to protect and pursue its rights to collateral and to payments.

17. If testimony is necessary to any facts relevant to this motion, Movant gives notice and preserves its right to and gives notice that it may, if necessary, have its representative testify regarding the indebtedness, Property value(s) and the defaults under agreements with the Movant. Such representative is Michael Thinesen, President, Mainstreet Bank, 7111 21st Ave., Centerville, MN 55038.

18. To the extent any notice is required pursuant to Cobb vs. Midwest Recovery Bureau Co., 295 N.W.2d 232, 237 (Minn. 1980), this Notice of Hearing and Motion also serves as notice of default and notice to the Borrowers that strict compliance with the contract term will be required. If the default is not cured before the hearing, Movant will exercise all repossession, sale, foreclosure and other remedies allowed against the Property promptly upon the Court signing the Order for Relief from the Automatic Stay. This Motion is supported by (a) Mainstreet Bank's Memorandum of Law in Support of Motion for Relief from the Automatic Stay; (b) Affidavit of Michael Thinesen; and (c) such other matters which may be presented at hearing on the motion or prior to the Court's decision or of which the Court may take notice.

WHEREFORE, Mainstreet Bank moves the Court for an Order granting it relief from the automatic stay of 11 U.S.C. §362(a) in accordance with 11 U.S.C. §362(d) to modify the automatic stay of 11 U.S.C. §362 so as to allow the Movant to exercise its state law remedies to:

1. Seize possession of the real property legally described as follows, to wit:

The East one-third of Lots 1, 2 and 3, Block 9, and the East 10 feet of the West two-thirds of Lots 1, 2 and 3, Block 9, Centerville, Anoka County, Minnesota ("Real Property");

foreclose the Mortgage (filed as Document No. 1536486 in the Anoka County Recorder's Office), collect all rents therefrom pursuant to any valid assignment of rents, and re-sell such Real Property;

2. Seize possession of the 2003 Ford F350 truck with vehicle identification number of #1FTWW33P83EC14759 ("Vehicle"), foreclose its lien thereon and re-sell same, and dispose of the Vehicle;
3. Pursue its other state law remedies, awarding attorneys' fees and costs as allowed by law relating to the said Real Property or Vehicle; and
4. For such other and further relief as may be just and equitable.

Date: September 28, 2004.

TENNIS AND COLLINS, P.A.

By: /s/ Robert H. Collins
Robert H. Collins (Minn. I.D. 237644)
Attorneys for Movant
20 North Lake Street, Suite 202
Forest Lake, MN 55025
(651) 464-7400

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

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The East one-third of Lots 1, 2 and 3, Block 9, and the East 10 feet of the West two-thirds of Lots 1, 2 and 3, Block 9, Centerville, Anoka County, Minnesota ("Real Property").

The street address of the Real Property is 1695 Main Street, Centerville, Anoka County, Minnesota 55038. Copies of the Note, Mortgage and Assignment of Rents are attached hereto as Exhibits A and B, respectively, and are incorporated herein by reference.

4. The subject Real Property has an estimated fair market value (based on an October 2000 appraisal) of \$330,000 and has a tax year 2005 listed market value of \$183,900 on the Anoka County real estate tax records.

5. On or about June 8, 2004, Debtors filed a Petition under Chapter 7 of Title 11 U.S. Code in the United States Bankruptcy Court for the District of Minnesota and listed the Real Property in the Petition as their homestead. At the time of the Note, the Real Property was not the Debtors' homestead.

6. DCS failed to make the June 30, 2004 balloon payment of principal and interest on the Note of \$228,940.37.

7. The outstanding indebtedness owed by DCS to Movant on the Note as of June 8, 2004 was \$239,057.28, including principal of \$225,501.46, interest of \$2,198.65 and late fees of \$11,351.17, plus per diem interest through date of payment plus costs, attorneys' fees, and other expenses incurred in connection with the indebtedness pursuant to the terms of the said Note.

8. In addition to the Note, RJ Sheppard Construction, Inc., a Minnesota corporation ("RJ Sheppard Construction") executed and delivered to Movant a Promissory Note dated June 5, 2003 ("Vehicle Note") in the original principal amount of \$43,757.83, a

copy of which is attached hereto as Exhibit C and incorporated by reference. Performance of the Vehicle Note was secured by a 2003 Ford F350 truck with vehicle identification number of #1FTWW33P83EC14759 ("Vehicle"). A copy of the Lien Card is attached hereto as Exhibit D and incorporated by reference. Debtors listed the Vehicle in their Amended Petition.

9. The outstanding indebtedness owed by RJ Sheppard Construction to Movant on the Vehicle Note as of June 8, 2004 was \$38,863.67. I estimate the fair market value of the interest of Debtors in the Vehicle to be \$31,500.00.

10. Movant has incurred attorneys' fees bringing this motion in excess of \$750.00.

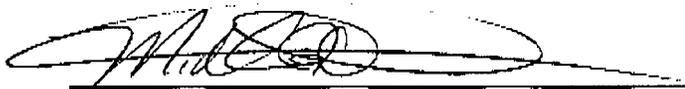
11. The Note, Mortgage and Vehicle Note provide for payment of Movant's attorneys' fees and costs.

12. Movant has incurred \$150.00 for filing fee costs for this motion being filed with the Court.

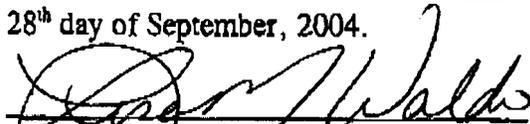
13. I have read the Motion in this matter, and it is true to the best of my knowledge, information and belief.

FURTHER, YOUR AFFIANT SAITH NOT except this Affidavit is submitted in support of Mainstreet Bank's Motion for Relief from the Automatic Stay.

Date: September 28, 2004.


Michael Thinesen

Subscribed and sworn to before me this 28th day of September, 2004.


Notary Public

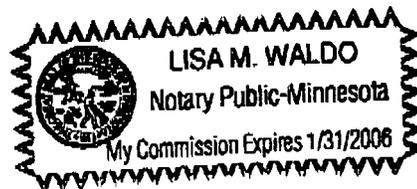


EXHIBIT A
COPY OF NOTE

32852
copy for file

PROMISSORY NOTE
(ADJUSTABLE RATE - BUSINESS PURPOSE)

AMOUNT: \$250,000.00

Forest Lake, Minnesota
November 8, 2000

FOR VALUE RECEIVED, the undersigned, DCS Properties, LLC, a Minnesota limited liability company ("Borrower") promises to pay to the order of The County Bank, a Minnesota corporation ("Lender"), its successors and assigns at 1650 South Lake Street, P.O. Box 638, Forest Lake, MN 55025 or at such other place as the holder hereof may designate in writing, in lawful money of the United States of America, the principal sum of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00) with interest at the rate and payable as follows:

1. Commencing on the date hereof and continuing until adjusted as hereinafter provided, this Note shall bear interest at the rate of ten percent (10%) per annum. The rate of interest shall be adjusted daily, each date being an "Adjustment Date" as used herein, to the highest prime rate published by The Wall Street Journal, plus one-half percent (0.5%) per annum. In no event shall the interest rate be less than nine percent (9%) per annum nor greater than eleven percent (11%) per annum.
2. Commencing one month following the date of this Note and on the same date of each and every month thereafter, there shall be due and payable monthly installments of principal and interest in the amount of \$2,582.50. If not if not sooner paid, the entire unpaid balance of principal and accrued interest shall be due and payable in full on the 8th day of November, 2003 ("Maturity Date").
3. Interest shall be computed on the basis of a 360-day year, but charged for the actual number of days principal is unpaid. Payments shall be credited first to interest and the remainder to principal.
4. There shall be no penalty for prepayment; provided, however, that any payment of principal and interest must be paid on a monthly payment date.
5. If any installment of principal and/or interest (including any payment due and payable on the Maturity Date) is not paid within ten (10) days of the due date thereof, Borrower shall pay to Lender in addition to the principal and interest hereunder a late charge equal to five percent (5%) of the amount of such installment.
6. This Note is secured by a Mortgage, Security Agreement and Fixture Financing Statement ("Mortgage") and an Assignment of Leases and Rents ("Assignment of Rents") of even date herewith covering certain property located in Anoka County, Minnesota and by Personal Guaranties from Raymond P. DeVine, Robert J. Sheppard and Todd A. Christopherson.

7. Any of the following shall be an event of default ("Event of Default") under this Note: (i) payment of any installment of principal and/or interest is not paid when due hereunder; or (ii) the occurrence of any event of default described in the Mortgage, Assignment of Rents, or in any other agreement evidencing or securing this Note (collectively "Loan Documents"); or (iii) the filing by or against Borrower of a request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as a bankrupt, relief as a debtor or other relief under the bankruptcy, insolvency or similar laws of the United States or any state; (iv) the making of any general assignment by Borrower for the benefit of creditors; or (v) the appointment of a receiver or trustee for Borrower or for any assets of Borrower, including, without limitation, the appointment of, or taking possession by, a "custodian" as defined by the Federal Bankruptcy Code. Upon the occurrence of an Event of Default, Lender or any holder hereof shall have the right and option to declare the unpaid principal balance and accrued interest hereunder immediately due and payable, without notice.
8. Time shall be of the essence in the payment of any sums due hereunder and the performance of any covenants or agreements contained herein or in the Loan Documents.
9. Acceptance of any payment in an amount less than the amount due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an event of default under this Note.
10. Upon any Event of Default, neither the failure of the holder to promptly exercise its right to declare the outstanding principal balance and accrued unpaid interest hereunder to be immediately due and payable, nor the failure of the holder to demand strict performance of any obligation of any person who may be liable hereunder, or any guarantor hereof, shall constitute a waiver of any such rights. In addition, any waiver of any rights which shall be given by the holder must and shall be in writing, and signed by the holder and then shall be enforceable only to the extent specifically set forth in writing. Waiver with reference to one event shall neither be a continuing waiver nor a bar or a waiver of any right or remedy as to any subsequent event.
11. The remedies of the holder, as provided herein, by law and in any Loan Documents, are not exclusive and shall be cumulative and concurrent and may be pursued singly, successively, or together, at the sole discretion of the holder and may be exercised as often as the occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.
12. The undersigned and all endorsers, guarantors, or any other person who may be liable hereunder, hereby jointly and severally waive presentment for payment, demand, notice of nonpayment, notice of protest and protest of this Note, diligence in collection or bringing suit, and all endorsers, guarantors or any other person who may be liable hereunder consent to any and all extensions of time, renewals, waivers or modifications that may be granted by the holder with respect to payment or other provisions of this Note, said Loan Documents, and to the release of any collateral or any part thereof, with or without substitution.

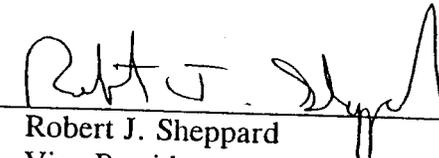
13. The undersigned, its successors or assigns, shall pay on demand all costs and expenses incurred by the holder in enforcing collection of the indebtedness evidenced by this Note.
14. Notwithstanding any provision in this Note or in the Loan Documents to the contrary, nothing herein or therein shall be construed so as to permit or require the payment of interest in excess of the highest rate of interest permitted to be charged in connection with the laws of the State of Minnesota. In the event that the interest in excess of such maximum rate of interest is received, then such excess shall be automatically applied to the principal balance due hereunder.
15. This Note is for business purposes.
16. This Note shall be governed by the laws of the State of Minnesota.

IN WITNESS WHEREOF, the undersigned has executed this Note the day and year first written above.

BORROWER:

DCS Properties, LLC

By: 
Raymond P. DeVine
Its: President

By: 
Robert J. Sheppard
Its: Vice President

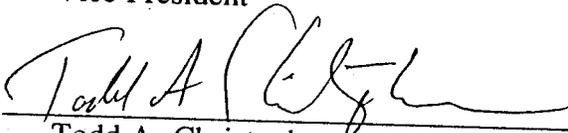
By: 
Todd A. Christopherson
Its: Treasurer

EXHIBIT B
COPY OF MORTGAGE and ASSIGNMENT OF RENTS

1536486

23-31-22-22-0004

(This Section Reserved for Recording)

**MORTGAGE, SECURITY AGREEMENT
AND FIXTURE FINANCING STATEMENT**

15-591487T
UNIVERSAL TITLE
METRO PRODUCTION
1777 WASHINGTON AVE
EDINA, MN 55439

THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (the "Mortgage") made as of the 8th day of November, 2000 by DCS Properties, LLC, a Minnesota limited liability company ("Mortgagor") in favor of The County Bank, a Minnesota corporation (the "Mortgagee"), its successors and assigns.

RECITALS

- A. Mortgagor is the owner of the Mortgaged Property more fully described below.
- B. In order to pay off the existing Contract for Deed on the Mortgaged Property, Mortgagee has agreed to loan to Mortgagor the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) to be evidenced by a promissory note (the "Note") of Mortgagor dated of even date herewith, executed and delivered to the order of Mortgagee, bearing interest as provided for in the Note, payable in equal monthly installments except that if not sooner paid, the unpaid principal and accrued interest shall be due and payable in full three (3) years following the date hereof.
- C. As security for the repayment of the indebtedness evidenced by the Note, Mortgagor is executing and delivering this Mortgage and an Assignment of Leases and Rents.
- D. As additional security for repayment of the Note, Raymond P. DeVine, Robert J. Sheppard and Todd A. Christopherson (collectively the "Guarantor") are each executing and delivering to Mortgagee a Personal Guaranty of even date herewith ("Guaranty").

GRANT OF MORTGAGE LIEN AND SECURITY INTEREST

NOW THEREFORE, WITNESSETH, that in consideration of the aggregate sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to secure, and as security for, the payment of the principal of and interest and other premiums, penalties and charges on the Note and the performance and observance by Mortgagor of all of the covenants, agreements, representations, warranties and conditions contained in the Note and Mortgage, Mortgagor does hereby grant, bargain, sell, convey, assign, transfer, pledge, set over and confirm unto Mortgagee, its successors and assigns, forever, and does hereby grant a mortgage lien and security interest, with power of sale, to Mortgagee, its successors and assigns, forever, in and to, all of the following described property (hereinafter "Mortgaged Property"):

- I. REAL PROPERTY. All tracts of land (hereinafter sometimes called the "Land"), lying and being in the County of Anoka and State of Minnesota, legally described as set forth on Exhibit A attached hereto and made a part hereof, together with: (i) all of the buildings, structures and other improvements now standing or at any time hereafter constructed or placed upon the Land, and (ii) all hereditaments, easements, rights, privileges and appurtenances now or hereafter belonging, attached or in any way pertaining to the Land or to any building, structure or improvement now or hereafter located thereon;
- II. PERSONAL PROPERTY. All buildings, improvements, fixtures, fittings, equipment, furniture and furnishings now or hereafter owned by Mortgagor attached to, located at, or placed in the improvements on the Land including, without limitation: (i) all heating, plumbing and lighting apparatus, elevators and motors, engines and machinery, electrical equipment, incinerator apparatus, air-conditioning apparatus, water and gas apparatus, pipes, water heaters, refrigerating plant and refrigerators, water softeners, carpets, carpeting, storm windows and doors, window screens, screen doors, storm sash, window shades or blinds, awnings, locks, fences, trees, shrubs, and (ii) all other fixtures, equipment and personal property of every kind and nature whatsoever now or hereafter owned by Mortgagor and attached or affixed to the Land or which is located on or is used or useful in connection with the operation of the Land or improvements thereon and is either now or hereafter owned by Mortgagor or Guarantor;
- III. RENT, LEASES AND PROFITS. All rents and profits which may now or hereafter become due under or by virtue of any lease, license or agreement, written or oral, relating to the use and occupancy of the Land or any building or improvement located thereon;
- IV. CONDEMNATION AWARDS AND INSURANCE PROCEEDS. Together with any condemnation awards or insurance proceeds relating to compensation

for any taking or casualty of all or any part of the Land or improvements thereon;

- V. GENERAL INTANGIBLES. All general intangibles applicable to the operation of the Mortgaged Property, whether now or hereafter acquired; and
- VI. PROPERTY IN POSSESSION OF MORTGAGEE. All property of every kind and description in which Mortgagor has or may acquire any interest, now or hereafter at any time in possession or control of Mortgagee for any reason and all dividends and distribution on or rights in connection with such property.

AND THE SAID MORTGAGOR for itself, its heirs, representatives, successors and assigns, does covenant with Mortgagee, its successors and assigns, that it is lawfully seized of the Mortgaged Property and has good right to sell and convey the same; that the Mortgaged Property is free from all encumbrances except as may be further stated in this Mortgage; that Mortgagee, its successors and assigns, shall quietly enjoy and possess the Mortgaged Property, and that Mortgagor will warrant and defend the title to the same against all lawful claims not specifically excepted in this Mortgage.

TO HAVE AND TO HOLD THE SAME, together with the possession and right of possession of the Mortgaged Property, unto Mortgagee, its successors and assigns, forever.

PROVIDED, NEVERTHELESS, that if Mortgagor, its successors or assigns, shall pay to Mortgagee, its successors or assigns, the sum of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00), according to the terms of the Note in said aggregate principal amount, together with any amendments, modifications, extensions or renewals thereof, with interest thereon, executed by Mortgagor and payable to Mortgagee, and shall pay to Mortgagee, its successors or assigns, at the times demanded and with interest thereon at the same rate specified in the Note, all sums advanced in protecting the lien of this Mortgage, including but not limited to taxes on the Mortgaged Property, insurance premiums, principal and interest on prior liens, expenses and attorney's fees herein provided for and all sums advanced for any other purpose authorized herein (the Note and all such sums, together with interest thereon, being collectively referred to as the "Indebtedness Secured Hereby"), and shall keep and perform all of the covenants and agreements herein contained, then this Mortgage shall become null and void, and shall be released at Mortgagor's expense.

1. GENERAL COVENANTS, AGREEMENTS AND WARRANTIES

- 1.1 PAYMENT OF INDEBTEDNESS; OBSERVANCE OF COVENANTS. Mortgagor shall duly and punctually pay, or cause to be duly and punctually paid, each and every payment of principal, interest and prepayment premium, if any, required by the Note and all other Indebtedness Secured Hereby, as and when the same shall become due, and shall duly and punctually perform and

observe all of the covenants, agreements and provisions contained herein and in the Note and any other instrument given as security for the payment of the Note.

- 1.2 **MAINTENANCE AND REPAIRS.** Mortgagor shall keep and maintain the Mortgaged Property in good condition, repair and operating condition, free from any waste or misuse, and will comply with all requirements of law, municipal ordinances and regulations, restrictions and covenants affecting the Mortgaged Property and its use, and will promptly repair or restore any buildings, improvements or structures now or hereafter located on the Land which may become damaged or destroyed to their condition prior to any such damage or destruction. Mortgagor shall neither vacate nor abandon the Mortgaged Property.
- 1.3 **PAYMENT OF UTILITY CHARGES, TAXES AND ASSESSMENTS.** Mortgagor shall, not later than fifteen (15) days prior to the date the same shall be due, pay or cause to be paid all charges made for electricity, gas, heat, water, sewer and other utilities furnished or used in connection with the Mortgaged Property, and all taxes, assessments, levies and encumbrances of every nature hereafter assessed against the Mortgaged Property and will furnish Mortgagee receipted bills evidencing such payment. Nothing in this Section 1.3 shall require the payment or discharge of any obligation imposed upon Mortgagor by this Section so long as Mortgagor shall diligently and in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceeding which shall operate to prevent the collection thereof or any other realization thereon and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same; provided, however, that during such contest Mortgagor shall, at the request of Mortgagee, provide security satisfactory to Mortgagee, assuring the discharge of Mortgagor's obligation under this Section and of any additional charge, penalty or expense arising from or incurred as a result of such contest; and provided further, however, that if at any time payment of any obligation imposed upon Mortgagor by this Section shall become necessary to prevent the delivery of a tax deed conveying the Land or any portion thereof because of nonpayment, then Mortgagor shall pay the same in sufficient time to prevent the delivery of such tax deed.
- 1.4 **LIENS.** Except for liens and encumbrances if any, listed on Exhibit B attached hereto or consented to in writing by Mortgagee ("Permitted Encumbrances"), Mortgagor will keep the Mortgaged Property free from all liens (other than liens or taxes and assessments not yet due and payable) and encumbrances of every nature whatsoever heretofore or hereafter arising and, upon written demand of Mortgagee, Mortgagor will pay and procure the release of such liens or encumbrances.
- 1.5 **COMPLIANCE WITH LAW.** Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental

authority affecting the Mortgaged Property unless the same is being diligently contested by Mortgagor in good faith and by proper proceedings.

- 1.6 **RIGHT OF MORTGAGEE TO ENTER.** Mortgagor will permit Mortgagee and its agents to enter, and authorize others to enter, upon any or all of the Land, at any time and from time to time, during normal business hours, to inspect the Mortgaged Property, to perform or observe any covenants, conditions or terms hereunder which Mortgagor shall fail to perform, meet or comply with, or for any other purpose in connection with the protection or preservation of Mortgagee's security, without thereby becoming liable to Mortgagor or any person in possession under the Mortgage.
- 1.7 **RIGHT OF MORTGAGEE TO PERFORM.** If Mortgagor fails to pay all and singular any taxes, assessments, levies or other similar charges or encumbrances heretofore or hereafter assessed against the Mortgaged Property, or fails to obtain the release of any lien or encumbrance (other than Permitted Encumbrances) of any nature heretofore or hereafter arising upon the Mortgaged Property, or fails to perform any other covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which adversely affects or questions the title to or possession of the Mortgaged Property or the interest of Mortgagor or Mortgagee therein, then Mortgagee, at Mortgagee's option, without notice to Mortgagor, may perform such covenants and agreements, investigate and defend against such action or proceeding, and take such other action as Mortgagee deems necessary to protect Mortgagee's interest. Any amounts disbursed by Mortgagee pursuant to this Section 1.7, including, without limitation, court costs and expenses and attorneys' fees, with interest thereon, shall become additional indebtedness of Mortgagor and shall be secured by this Mortgage. Such amount shall be payable upon written notice from Mortgagee to Mortgagor requesting payment thereof, and shall bear interest from the date of disbursement at a rate equal to the rate in effect under the Note. Nothing contained in this Section 1.7 shall require Mortgagee to incur any expense or to do any act or thing hereunder.
- 1.8 **DUE ON SALE OR TRANSFER.** Mortgagor shall not sell, assign, lease convey, or dispose of either the legal or equitable title, or both, to or any other interest in, all or any portion of the Mortgaged Property without the prior written consent of Mortgagee. If Mortgagor is not a natural person, a transfer of any ownership interest or the dissolution and liquidation of Mortgagor shall constitute a transfer of an interest in the Mortgaged Property. Consent as to any one transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. In the event of the acceleration of the Indebtedness Secured Hereby by Mortgagee by reason of the failure of Mortgagor to obtain the consent herein required, then in addition to the Indebtedness Secured Hereby, there shall be due and payable the prepayment premium, if any, as provided for in the Note, for a voluntary prepayment at that time (and if at such time no prepayment privilege exists under the Note, then

with the prepayment premium provided for in the Note at the earliest date on which the Indebtedness Secured Hereby could be prepaid).

- 1.9 NO SECONDARY FINANCING. Mortgagor shall not mortgage, grant a security interest in, or further encumber all or any portion of the Mortgaged Property without the prior written consent of Mortgagee.
- 1.10 ASSIGNMENT OF RENTS. Mortgagor hereby bargains, sells, assigns and sets over to Mortgagee all rents, issues and profits of the Mortgaged Property to the extent provided in the Assignment of Leases and Rents, if any, of even date herewith given by Mortgagor to Mortgagee.
- 1.11 FURTHER ASSURANCES. At any time and from time to time, upon request by Mortgagee, Mortgagor will make, execute and deliver, or cause to be made, executed and delivered, to Mortgagee, any and all other future instruments, certificates and other documents as may, in the reasonable opinion of Mortgagee, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve, the obligations of Mortgagor under the Note or under the mortgage and security interest granted by this Mortgage. Upon any failure by Mortgagor so to do, Mortgagee may make, execute and record any and all such instruments, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee its agent and attorney-in-fact so to do.
- 1.12 EXPENSES. Mortgagor will pay or reimburse Mortgagee for all reasonable attorneys' fees, costs and expenses incurred by Mortgagee in any legal proceeding or dispute of any kind in which Mortgagee is made a party, or appears as party plaintiff or defendant, affecting the Indebtedness Secured Hereby, this Mortgage, the interest created herein or the Mortgaged Property, including, but not limited to, the exercise of the power of sale set forth in this Mortgage, any condemnation action involving the Mortgaged Property or any action to protect the security hereof, and any such amounts paid by Mortgagee shall be added to the indebtedness secured by this Mortgage.
- 1.13 BOOKS AND RECORDS; FINANCIAL STATEMENTS. Mortgagor will keep and maintain full, true and accurate books of account, all of which books and records relating thereto shall be open to inspection by Mortgagee or its representative during normal business hours. Mortgagor shall furnish to Mortgagee:
 - 1.13.1 Within ninety (90) days following the close of each fiscal year of Mortgagor, a copy of the unaudited financial statements of Mortgagor as of the end of each such fiscal year, in reasonable detail, subject to year-end adjustments, together with a current rent roll and certified by Mortgagor, or if Mortgagor is not a natural person, certified by a duly authorized agent, officer or partner of Mortgagor, to have been

prepared in accordance with generally accepted accounting principles consistently applied by Mortgagor, except for any inconsistencies explained in such certificate;

1.13.2 As soon as available following the end of such fiscal year of Mortgagor, but in no event later than thirty (30) days following the latest date for the filing thereof without penalty, copies of all federal income tax returns of Mortgagor and the Guarantors for such fiscal year; and

1.13.3 Within ninety (90) days following the end of each calendar year, financial statements of the Guarantors, each in reasonable detail as requested by Mortgagee, and certified by the respective Guarantors as being correct and complete.

1.14 **ESCROW FOR TAXES AND INSURANCE.** Mortgagor shall, following the occurrence of an Event of Default hereunder, at the election of Mortgagee, deposit with Mortgagee on the first day of each and every month hereafter, an amount equal to one-twelfth (1/12th) of the estimated annual taxes and assessments and insurance premiums ("Charges") due on the Mortgaged Property. From time to time, out of such deposits, Mortgagee will, upon the presentation to Mortgagee by Mortgagor of the bills therefor, pay the Charges or will, upon presentation or receipted bills therefor, reimburse Mortgagor for such payments made by Mortgagor. In the event the deposits on hand shall not be sufficient to pay all the estimated Charges when the same shall become due from time to time, or the prior payments shall be less than the currently estimated monthly amounts, then Mortgagor shall pay to Mortgagee on demand any amount necessary to make up the deficiency. The excess of any such deposits shall be credited to subsequent payments to be made for such items. If a Default or an Event of Default shall occur under the terms of this Mortgage or the Note, Mortgagee may, at its option, without being required to do so, apply any deposits on hand to the Indebtedness Secured Hereby, in such order and manner as Mortgagee may elect. When the Indebtedness Secured Hereby has been fully paid, any remaining deposits shall be returned to Mortgagor. All deposits are hereby pledged as additional security for the Indebtedness Secured Hereby.

1.15 **ENVIRONMENTAL COMPLIANCE.** Mortgagor hereby represents and warrants that:

1.15.1 The Mortgaged Property, and the use and operation thereof, are currently in compliance and will remain in compliance with all applicable laws and regulations (including but not limited to all environmental, health and safety laws and regulations);

- 1.15.2 All required governmental permits are in effect and will remain in effect. The Mortgaged Property and the use and operation thereof, comply and will continue to comply therewith;
- 1.15.3 There are and will be no environmental, health or safety hazards that pertain to any of the Mortgaged Property or the business or operations conducted thereon. No use, treatment, storage or disposal of hazardous wastes or hazardous substances has or will occur on, in or underneath the Mortgaged Property. The term "hazardous wastes" and "hazardous substances" are deemed to include any hazardous waste, hazardous substance, pollutants, contaminants or toxins defined or regulated by any federal, state or local law, ordinance or government rule or regulation including without limitation the definitions of such terms as may be found in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended, The Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended, the regulations adopted pursuant to said laws, and any other applicable federal, state or local law, ordinance or regulation;
- 1.15.4 There are no pending or threatened actions or proceedings by any governmental agency or any other entity regarding the condition or use of the Mortgaged Property, or regarding any environmental, health or safety law. Mortgagor has received no summons, citations, directives, letters or other communications, written or oral, from any federal, state or local agency or department concerning any of the materials described in this paragraph on or under the Mortgaged Property. Mortgagor will promptly notify Mortgagee of any notices of or any pending or threatened action or proceeding in the future, and Mortgagor will promptly take all necessary action to cure any condition complained of to the satisfaction of Mortgagee;
- 1.15.5 The businesses and all operations conducted on the Mortgaged Property will lawfully dispose of their hazardous wastes and hazardous substances, if any; and
- 1.15.6 There are no underground storage tanks, PCBs, asbestos, hazardous wastes or hazardous substances present on or underneath the Mortgaged Property and none will be on the Mortgaged Property in the future.

Mortgagor assumes all obligations of compliance with all environmental requirements imposed by federal state and local authorities that affect the Mortgaged Property or any business or other activity conducted thereon or therewith. Mortgagor covenants and agrees to indemnify and defend Mortgagee and its employees, agents, representatives, successors and assigns, whether

Mortgagee remains in its current status or as owner of the Mortgaged Property, from and against any and all liabilities, losses, claims, actions, penalties, fines, punitive damages, costs, damages and all other expenses including reasonable attorneys' fees, resulting from or due to the release, threatened release, generation, storage, handling, leakage, dumping, discharge, disposal or discovery of any hazardous or toxic substance or materials on or under the Mortgaged Property which arise during or after the time Mortgagor is an owner of the Mortgaged Property (including any time for redemption by Mortgagor after any foreclosure sale) and which were caused or brought about directly or indirectly by actions or inaction of Mortgagor, its agents, servants, employees, representatives and contractors. Mortgagee shall be allowed to enter upon the Mortgaged Property at reasonable times and upon notice to Mortgagor for the purpose of performing inspections, taking soil borings, or conducting any other tests or procedures, all at its own cost, which Mortgagee shall deem appropriate to determine whether any such materials are present. The indemnification contained in this paragraph shall survive either the foreclosure, release or satisfaction of this Mortgage, and shall also apply if Mortgagee in any way comes into title of the Mortgaged Property by deed in lieu of foreclosure, voluntary foreclosure agreement or otherwise. In the event any investigation or monitoring of site conditions or any cleanup, containment, restoration, removal or other remedial work is required under any applicable law, by any judicial order, or by any governmental entity as a result of operation or activities upon, or any use or occupancy of any portion of the Mortgaged Property by Mortgagor, its agents, servants, employees, representatives or contractors, then at Mortgagee's option either Mortgagor shall perform or cause to be performed all remedial work in compliance with such law or Mortgagee may cause such remedial work to be performed and Mortgagor shall reimburse Mortgagee within thirty (30) days of written demand. All remedial work to be performed by Mortgagor shall be performed by one or more contractors, selected by Mortgagor and approved in advance in writing by Mortgagee, and under the supervision of a consulting engineer selected by Mortgagor and approved in advance in writing by Mortgagee. All costs and expenses of such remedial work shall be paid by Mortgagor, including, without limitation, the charges of each contractor and consulting engineer. Any reasonable fees, costs and expenses imposed upon or incurred by Mortgagee at any time and from time to time on account of any breach of any of the covenants, representations or warranties contained in this Section shall be immediate due and payable by Mortgagor to Mortgagee upon demand for reimbursement for same, and shall become part of the Indebtedness Secured Hereby and interest will accrue thereon. Mortgagor hereby covenants and agrees to protect, defend, indemnify, and hold harmless Mortgagee from any and all such costs and expenses and any fines or penalties.

- 1.16 COMPLIANCE WITH ZONING LAWS. The Land is zoned to permit the use of the Land as the site for the improvements thereon, without the need for special variance or exception, except to the extent that the same has been duly

obtained, the site and improvements comply with all subdivision and platting requirements and would so comply if the Land was conveyed as a separate parcel, and there is no record of any violation of any zoning, building, or other restrictions relating to the use of the improvements on the Land.

1.17 DEPOSITORY ACCOUNT. During the time that any Indebtedness Secured Hereby remain unpaid, Mortgagor shall maintain with Mortgagee a depository account. In the event that the average collected balance of such depository account for any twelve (12) month period is less than \$5,000, Mortgagor shall pay to Mortgagee, in addition to any other sums due and payable under the Note or hereunder, upon demand, the annual sum of \$500.00.

2. INSURANCE, CONDEMNATION AND USE OF PROCEEDS

2.1 INSURANCE. Mortgagor shall keep the buildings, structures, fixtures and other improvements now existing or hereafter erected on the Land, and the personal property secured hereby, insured against loss by fire, vandalism and malicious mischief, perils of extended coverage, and such other hazards, casualties and contingencies as may be reasonably specified by Mortgagee, in an amount equal to the full replacement cost of the improvements located on the Land, including the cost of debris removal, together with a vandalism and malicious mischief endorsement, but in no event less than the full insurable value. In addition, Mortgagor shall, at its expense, procure and maintain the following insurance coverages:

2.1.1 General liability insurance against liability for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition of the Mortgaged Property or any part thereof, in the maximum amounts required by the Leases, but in no event single limit coverage of less than \$1,000,000 for death or personal injury to any one person, or for all personal injuries and deaths resulting from any one accident and for property damage in any one accident;

2.1.2 Broad Form Boiler and Machinery Insurance on all equipment and objects customarily covered by such insurance and providing for full repair and replacement cost coverage;

2.1.3 Flood insurance in the maximum obtainable amount but not to exceed the replacement cost of the improvements on the Land unless evidence is provided that the Mortgaged Property is not within a flood plain as defined by the Federal Insurance Administration;

2.1.4 Rent loss or business interruption insurance covering risk of loss due to the occurrence of any hazard insured against under the required fire and extended coverage insurance in an amount equal to the sum of: (i) annual payments under the Note, (ii) a full year's real estate taxes,

special assessments and utility charges, and (iii) the annual premium for the insurance required by this Section; and

2.1.5 Insurance against such other casualties and contingencies as Mortgagee may from time to time require, if such insurance against such other casualties and contingencies is available, all in such manner and for amounts as may be reasonably satisfactory to Mortgagee.

2.2 **INSURANCE PROVIDER AND POLICY.** All insurance shall be carried in companies licensed to do business in the State of Minnesota and approved by Mortgagee, and the policies and renewals thereof shall: (i) contain a waiver of defense based on co-insurance, (ii) be constantly assigned and pledged to and held by Mortgagee as additional security for the Indebtedness Secured Hereby, (iii) have attached thereto loss payable clauses in favor of and in form acceptable to Mortgagee, and (iv) provide that Mortgagee shall receive at least thirty (30) days' prior written notice of cancellation or any substantial modification of the policy. In default thereof, Mortgagee may effect any insurance required to be maintained by Mortgagor pursuant to this Section 2.2, and the amount paid therefor shall become immediately due and payable with interest at a rate set forth in the Note. In the event of loss or damage to the Mortgaged Property, Mortgagor will give immediate written notice thereof to Mortgagee, who may make proof of loss or damage if not made promptly by Mortgagor. Mortgagor hereby authorizes Mortgagee to settle and compromise all claims on such policies after consultation with Mortgagor and hereby authorizes and directs each insurance company concerned to make payment for any such loss to Mortgagor and Mortgagee jointly. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any property insurance policies then in force shall pass to the purchaser at the foreclosure sale.

2.3 **CONDEMNATION.** Mortgagor shall give Mortgagee immediate written notice of the actual or threatened commencement of any proceedings under condemnation or eminent domain affecting all or any part of the Mortgaged Property or any easement therein or appurtenance thereof. If all or any part of the Mortgaged Property is damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking, acquisition or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this instrument, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor, and the same shall be paid forthwith to Mortgagee, to be applied first to the cost of collection and the balance to the Indebtedness Secured Hereby. Any such application shall not defer or postpone any payments due under the Note.

2.4 **APPLICATION OF INSURANCE PROCEEDS.** All proceeds of insurance received by Mortgagee shall be applied first to the payment of all costs and

expenses incurred by Mortgagee in obtaining such proceeds, and second, at the sole option of Mortgagee, either: (i) to the reduction of the Indebtedness Secured Hereby, or (ii) to the restoration or repair of the Mortgaged Property without affecting the lien of the Mortgage or the obligation of Mortgagor hereunder. Any such application shall not reduce or postpone the monthly payments otherwise required under the Note. No interest shall be paid on insurance proceeds while held by Mortgagee.

2.5 MORTGAGOR'S RIGHTS TO REPAIR, REPLACE, REBUILD OR RESTORE. Notwithstanding any of the terms in Section 2.4, Mortgagor may elect to have the proceeds of insurance, less the portion thereof applied to the costs of obtaining such proceeds ("Net Proceeds"), applied to replace, repair, rebuild and restore the Mortgaged Property to substantially the same condition as existed before the event causing the damage or destruction, with such changes, alterations and modifications as may be desired by Mortgagor, and approved by Mortgagee, and will be suitable for continued operation of the Mortgaged Property, subject, however, to the following conditions:

2.5.1 No Event of Default hereunder shall have occurred and be continuing;

2.5.2 Mortgagee shall apply the Net Proceeds to payment of the costs of repair, replacement, rebuilding or restoration of the Mortgaged Property upon compliance with such construction and disbursement terms as Mortgagee may deem reasonably necessary, including deposit with Mortgagee of such funds of the Mortgagor as may be required to insure payment of all costs of rebuilding and restoration. If such deposit is not made when requested by Mortgagee, or if any other Event of Default should occur while Mortgagee is retaining the Net Proceeds, Mortgagee may apply said Net Proceeds, at its option, in accordance with Section 2.4 hereof; and

2.5.3 Mortgagor shall obtain, at its sole expense, a MAI appraisal in form and substance satisfactory to Mortgagee, stating that the appraised value of the Mortgaged Property after the repair, replacement, rebuilding or restoration of the Mortgaged Property shall be at least equal to the value thereof immediately prior to the damage or destruction.

3. DEFAULT

3.1 EVENT OF DEFAULT DEFINED. Any one of the following shall constitute an "Event of Default":

3.1.1 Mortgagor shall fail to pay, when due, any amounts required to be paid to Mortgagee under the Note whether at stated maturity or at a date fixed for any installment payment or by acceleration or otherwise;

- 3.1.2 Mortgagor shall fail to pay when due any other Indebtedness Secured Hereby;
- 3.1.3 Mortgagor or any of the Guarantors of the Indebtedness Secured Hereby ("Guarantor") shall fail to observe or perform any of the respective covenants, conditions or agreements to be observed or performed by it under the Mortgage, the Note, the Assignment of Leases and Rents, or any Guaranty of the Indebtedness Secured Hereby, for a period of ten (10) days after written notice specifying such default;
- 3.1.4 Mortgagor shall fail to pay when due, whether by acceleration or otherwise, any installment of principal or interest of the indebtedness secured by any Permitted Encumbrance or shall fail to timely perform any of the terms, covenants or conditions contained in any document evidencing or securing any such Permitted Encumbrance;
- 3.1.5 Mortgagor or any of the Guarantors shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future state or federal bankruptcy act or under any similar federal or state law, or shall be adjudicated a bankrupt or insolvent, or shall make a general assignment for the benefit of its or his creditors, or shall be unable to pay his or its debts generally as they become due; or if a petition or answer proposing the adjudication of Mortgagor or of any of the Guarantors as a bankrupt, or if a petition or answer seeking his or its reorganization under any present or future state or federal bankruptcy act or similar federal or state law shall be filed in any court, and such petition or answer shall not be discharged or denied within thirty (30) days after the filing thereof; or if a receiver, trustee or liquidator of Mortgagor or of any Guarantor of all or substantially all of the assets of Mortgagor or of any Guarantor, shall be appointed in any proceeding brought against Mortgagor, or any Guarantor, and shall not be discharged within thirty (30) days of such appointment; or if Mortgagor or any Guarantor shall consent to or acquiesce in such appointment; or if any property of Mortgagor or of any Guarantor shall be levied upon or attached in any proceeding;
- 3.1.6 Final judgment for the payment of money in excess of \$5,000 shall be rendered against Mortgagor or any of the Guarantors, and shall remain undischarged for a period of thirty (30) days during which such execution shall not be effectively stayed;
- 3.1.7 Mortgagor or any of the Guarantors shall be or become insolvent;
- 3.1.8 Any representation or warranty made by Mortgagor herein or in the Note or in any other document given by Mortgagor or any Guarantor

in connection with the transaction evidenced thereby, shall prove to be untrue or misleading in any material respect, or any statement, certificate or report furnished hereunder or under any or the foregoing documents by or on behalf of Mortgagor or of any of the Guarantors shall prove to be untrue or misleading in any material respect on the date when the facts set forth and recited therein are stated or certified; and

3.1.9 Mortgagor, if a corporation or partnership, shall liquidate, wind up, merge, terminate or suspend its business operations or sell all or substantially all of its assets, without the prior written consent of Mortgagee.

3.2 REMEDIES. Upon the occurrence of an Event of Default or at any time thereafter, Mortgagee may, at its option, exercise any and all of the following rights and remedies, singularly or cumulatively, (and any other rights and remedies available to it including, without limitation, the rights and remedies provided under the Note):

3.2.1 Mortgagee may, without notice to Mortgagor, declare immediately due and payable all or any portion of the Indebtedness Secured Hereby and the same shall thereupon be immediately due and payable;

3.2.2 Mortgagee may foreclose this Mortgage by action or advertisement, and Mortgagor hereby authorizes Mortgagee to do so, power being herein expressly granted to sell the Mortgaged Property at public auction without any prior hearing thereof and to convey the same to the purchaser, in fee simple, pursuant to the statutes of Minnesota in such case made and provided and, out of the proceeds arising from such sale, to pay all Indebtedness Secured Hereby with interest, and all legal costs and charges of such foreclosure and the maximum attorney's fees permitted by law, which costs, charges and fees Mortgagor herein agrees to pay, and to pay the surplus, if any, to Mortgagor, its successors or assigns; and

3.2.3 Mortgagee may exercise any of the remedies made available to a secured party under the Uniform Commercial Code in effect in the State of Minnesota, or other applicable law, with respect to any of the Mortgaged Property which constitutes personal property, including without limitation the right to take possession thereof, proceeding without judicial process or by judicial process (without a prior hearing or notice thereof, which Mortgagor hereby waives), and the right to sell, lease or otherwise dispose of or use any or all of such personal property. Mortgagee may require Mortgagor to assemble such personal property and make it available to Mortgagee at a place designated by Mortgagee which is reasonably convenient to both Mortgagor and Mortgagee. If

notice to Mortgagor of any intended disposition of any of the Mortgaged Property constituting personal property or any other intended action is required by law in a particular instance, such notice shall be deemed commercially reasonable if given (in the manner specified in Section 5.7 hereof) at least ten (10) calendar days prior to the date of intended disposition or other action.

In the event of a sale under this Mortgage, whether by virtue of judicial proceedings or otherwise, the Mortgaged Property may, at the option of Mortgagee, be sold as one parcel and as an entirety or in such parcels, manner and order as Mortgagee in its sole discretion may elect.

WAIVER. MORTGAGOR UNDERSTANDS AND AGREES THAT IF AN EVENT OF DEFAULT SHALL OCCUR, MORTGAGEE HAS THE RIGHT, INTERALIA, TO FORECLOSE THIS MORTGAGE BY ADVERTISEMENT PURSUANT TO MINNESOTA STATUTES, CHAPTER 580, AS AMENDED, OR PURSUANT TO ANY SIMILAR OR SUBSTITUTE STATUTE HEREAFTER ENACTED; THAT IF MORTGAGEE ELECTS TO FORECLOSE BY ADVERTISEMENT, IT MAY CAUSE THE MORTGAGED PROPERTY, OR ANY PART THEREOF, TO BE SOLD AT PUBLIC AUCTION; AND THAT NOTICE OF SUCH SALE MUST BE PUBLISHED FOR SIX WEEKS AND GIVEN PERSONALLY TO THE PERSON IN POSSESSION OF THE MORTGAGED PROPERTY AT LEAST FOUR WEEKS BEFORE THE SALE.

MORTGAGOR FURTHER UNDERSTANDS THAT IF AN EVENT OF DEFAULT SHALL OCCUR, MORTGAGEE MAY TAKE POSSESSION OF THE PERSONAL PROPERTY WHICH IS PART OF THE MORTGAGED PROPERTY AND DISPOSE OF THE SAME BY SALE OR OTHERWISE IN ONE OR MORE PARCELS; PROVIDED, HOWEVER, THAT IF NOTICE OF INTENDED DISPOSITION THEREOF IS REQUIRED TO BE GIVEN, SUCH NOTICE SHALL BE DEEMED REASONABLY GIVEN IF GIVEN AT LEAST TEN (10) DAYS PRIOR TO SUCH DISPOSITION, ALL AS PROVIDED FOR BY THE MINNESOTA UNIFORM COMMERCIAL CODE, AS HEREAFTER AMENDED OR BY ANY SIMILAR OR SUBSTITUTE STATUTE HEREAFTER ENACTED.

MORTGAGOR FURTHER UNDERSTANDS THAT UNDER THE CONSTITUTION OF THE UNITED STATES, IT OR HE MAY HAVE THE RIGHT TO A HEARING BEFORE THE MORTGAGED PROPERTY MAY BE SOLD AND THAT THE PROCEDURE FOR FORECLOSURE BY ADVERTISEMENT AND FOR DISPOSAL OF PERSONAL PROPERTY DESCRIBED ABOVE DOES NOT REQUIRE ANY HEARING OR OTHER JUDICIAL PROCEEDING.

MORTGAGOR HEREBY RELINQUISHES, WAIVES AND GIVES UP ITS CONSTITUTIONAL RIGHTS, IF ANY, TO A HEARING BEFORE SALE OF THE MORTGAGED PROPERTY AND EXPRESSLY CONSENTS AND AGREES THAT THE MORTGAGED PROPERTY MAY BE FORECLOSED BY ADVERTISEMENT

4. SECURITY AGREEMENT

- 4.1 SECURITY AGREEMENT. This Mortgage shall constitute a security agreement as defined in the Uniform Commercial Code ("Code") and Mortgagor hereby grants to Mortgagee a security interest within the meaning of the Code in favor of Mortgagee in:
- 4.1.1 All personal property, rents and leases, condemnation awards and insurance proceeds, general intangibles and property in possession of Mortgagee, all of which is described in the granting clause of this Mortgage;
 - 4.1.2 All inventory (as the term is defined in the applicable Uniform Commercial Code), wherever located, now owned or hereafter at any time acquired by Borrower or in which Borrower obtains rights;
 - 4.1.3 All equipment (as the term is defined in the applicable Uniform Commercial Code), wherever located, now owned or hereafter at any time acquired by Borrower or in which Borrower obtains rights;
 - 4.1.4 Each and every right of Borrower to the payment of money, including but not limited to all accounts, instruments, chattel paper, and general intangibles constituting rights to payment (as those terms are defined in the applicable Uniform Commercial Code), whether such right to payment now exists or hereafter arises, together with all other rights and interests (including all liens and security interests) which Borrower may at any time have by law or agreement against any account debtor (as defined in the applicable Uniform Commercial Code) or other obligor obligated to make any such payment or against any of the property of such account debtor or other obligor; and
 - 4.1.5 All general intangibles (as the term is defined in the applicable Uniform Commercial Code) now owned or hereafter at any time acquired by Borrower.

All of which collectively shall hereinafter be referred to as the "Collateral." The Collateral shall include (i) all substitutions and replacements for and proceeds of any and all of the foregoing property, and in the case of all tangible Collateral, all accessions, accessories, attachments, parts, equipment and repairs now or hereafter attached or affixed to or used in connection with any such goods and (ii) all warehouse receipts, bills of lading and other documents of title now or hereafter covering such goods.

The Collateral is to be used by Mortgagor solely for business purposes and shall be kept at the buildings constructed on the Land and will not be removed therefrom without the consent of Mortgagee and may be affixed to such

buildings but will not be affixed to any other real estate. Mortgagor will from time to time provide Mortgagee, on request, with itemizations of all such Collateral used in connection with the operation of the improvements located on the Land. Subject to the provisions of this section, in any instance where Mortgagor in its sole discretion determines that any item subject to a security interest under this Mortgage has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary for the operation of the improvements located on the Land, Mortgagor may, at its expense, remove and dispose of it and substitute and install other items not necessarily having the same function provided, that such removal and substitution shall not impair the operating utility and unity of the improvements. All substituted items shall become part of the Collateral and subject to the lien of this Mortgage. Any amounts received or allowed Mortgagor upon the sale or other disposition of the removed items of property shall be applied only against the cost of acquisition and installation of the substituted items. Nothing herein contained shall be construed to prevent any tenant or sub-tenant from removing from the improvements trade fixtures, furniture and equipment installed by it and removable by tenant under the terms of the Lease, on the conditions, however, that the tenant or subtenant shall at its own cost and expense, repair any and all damage to the improvements resulting from or caused by the removal thereof.

4.2 **FIXTURE FILING.** The filing of this Mortgage shall constitute a fixture filing in the office wherein it is filed, and a carbon, photographic or other reproduction of this document may also be filed as a financing statement:

4.2.1 Name and Address of Debtor and Record owner of Real Estate (if different):

DCS Properties, LLC
1695 Main Street
Centerville, MN 55038.

4.2.2 Name and Address of Secured Party:

The County Bank
1650 South Lake Street
Forest Lake, MN 55025.

4.2.3 Description of the Types or items of property covered by this financing statement:

see Section 4.1.

4.2.4 Description of real estate to which all or a part of the collateral is attached or upon which it is located:

the land as legally described on the attached Exhibit A.

4.2.5 Federal Tax Identification Number:

41-1966533.

Some of the above described collateral is or is to become fixtures upon the real estate described on Exhibit A, and this financing statement is to be filed for record in the public real estate records.

5. MISCELLANEOUS

- 5.1 **WAIVER.** No waiver by Mortgagee of any Event of Default shall be a waiver of any other Event of Default or the same Event of Default on a later occasion; no delay or failure by Mortgagee to exercise any right or remedy hereunder or under applicable law shall be a waiver of such right or remedy; and no single or partial exercise by Mortgagee of any such right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy at another time.
- 5.2 **CUMULATIVE REMEDIES.** Each remedy of Mortgagee hereunder is distinct and cumulative to each other right or remedy under this Mortgage or under any other instrument securing the Indebtedness Secured Hereby.
- 5.3 **CHOICE OF LAW.** The loan secured by this Mortgage is intended by the parties to be a Minnesota loan, and this Mortgage is made and executed under the laws of said State and is intended to be governed by the laws of said State.
- 5.4 **SUCCESSORS AND ASSIGNS.** This Mortgage, and each and every covenant, agreement and other provision hereof, shall be binding upon Mortgagor and its successors and assigns and shall inure to the benefit of Mortgagee and its successors and assigns. As used herein, the words "successors and assigns" shall also be deemed to include the heirs and personal representatives of any natural person who is a party to this Mortgage.
- 5.5 **UNENFORCEABILITY OF CERTAIN CLAUSES.** The unenforceability or invalidity of any provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.
- 5.6 **CAPTIONS AND HEADINGS.** The captions and headings of the various sections of this Mortgage are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

EXHIBIT A
Legal Description of Real Property

The East one-third of Lots 1, 2 and 3, Block 9, and the East 10 feet of the West two-thirds of Lots 1, 2 and 3, Block 9, Centerville, Anoka County, Minnesota.

EXHIBIT B
Permitted Encumbrances

1. A Sanitary Sewer easement over the North 15 feet of the East 60 feet of Lots 2, Block 9, Centerville, as shown in Doc. No. 465351.
2. A Sanitary Sewer easement over the South 15 feet of the North 25 feet of the East 50 feet of Lot 2, Block 9, Centerville, as shown in Doc. No. 465352.

ABSTRACT

Receipt # <u>95558/616.50</u>	<input type="checkbox"/> Certified Copy Date Mailed _____
Date/Time: <u>11/27 / 9:30</u>	<input type="checkbox"/> Tax Liens / Releases
Doc. Order <u>5</u> of <u>5</u>	<input type="checkbox"/> Multi-Co Doc Tax Pd
✓ by: Pins: <u>9</u>	<input type="checkbox"/> Transfer <input type="checkbox"/> New Desc.
Recordability / Delqs: <u>9</u>	<input type="checkbox"/> Division <input type="checkbox"/> GAC
Filing Fees: <u>36.50</u>	<input type="checkbox"/> Status <input type="checkbox"/> Def. Spec
Well Certificate Received this Date: _____ Anoka County Recorder	<input type="checkbox"/> Other <input checked="" type="checkbox"/> No Change
Notes: <u>NS - MARGIN</u> <u>22 PAGES</u>	

DOCUMENT NO. 1536486.0 ABSTRACT
ANOKA COUNTY MINNESOTA

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED IN THIS OFFICE
FOR RECORD ON **NOV 27 2000**
AT **9:30 AM** AND WAS DULY RECORDED.
FEES AND TAXES IN THE AMOUNT OF **\$616.50** PAID.

RECEIPT NO. **2000095558**
EDWARD M. TRESKA
ANOKA COUNTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES
BY **JAR**
DEPUTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES

(This Section Reserved for Recording)

ASSIGNMENT OF LEASES AND/OR RENTS

THIS ASSIGNMENT is made this 8th day of November, 2000, between DCS Properties, LLC, a Minnesota limited liability company ("Assignor") and The County Bank, a Minnesota corporation, its successors and assigns ("Assignee").

RECITALS

- A. Assignor has executed and delivered to Assignee its Promissory Note of even date herewith in the principal amount of \$250,000.00 ("Note").
- B. To secure payment of the Note, Assignor has executed and delivered to Assignee a Mortgage, Security Agreement and Fixture Financing Statement of even date herewith (together with all future amendments and supplements thereto, "Mortgage"), covering certain property which, among other things, includes the real estate described in Exhibit A attached hereto and the buildings, improvements and fixtures now or hereafter located thereon ("Mortgaged Property").
- C. Assignee, as a condition to making the loan evidenced by the Note, has required the execution of this Assignment.

ACCORDINGLY, in consideration of the premises and in further consideration of the sum of One Dollar (\$1.00) paid by Assignee to Assignor, the receipt of which is hereby acknowledged, Assignor does hereby make the following:

ASSIGNMENT

- 1. Assignor does hereby grant, transfer and assign to Assignee all of the right, title and interest of Assignor in and to:

- 1.1 any and all present or future leases or tenancies, whether written or oral, covering or affecting any or all of the Mortgaged Property, specifically including, without limitation, those certain leases, described as follows:
 - 1.1.1 Commercial Lease dated October 17, 2000 between DCS Properties, LLC as Lessor and Ray DeVine, Realtor as Lessee for a term of one year on Unit 201, 1695 Main Street, Centerville, MN 55038;
 - 1.1.2 Commercial Lease dated October 17, 2000 between DCS Properties, LLC as Lessor and ICEM CFD Engineering as Lessee for a term of two years on Unit 202, 1695 Main Street, Centerville, MN 55038;
 - 1.1.3 Residential Lease dated August 31, 2000 between DCS Properties, LLC as Lessor and Adam Schorer, Jessica Englund, Glen Morcomb and Missy Kerbel as Lessees for a term of 12 months on Unit 300, 1695 Main Street, Centerville, MN 55038; and
 - 1.1.4 Commercial Lease dated October 15, 2000 between DCS Properties, LLC as Lessor and R.J. Sheppard Const. as Lessee for a term of two years on Unit 102, 1695 Main Street, Centerville, MN 55038;

(all of which, together with any and all extensions, modifications and renewals thereof, are hereinafter collectively referred to as the "Leases" and each of which is referred to as a "Lease");
- 1.2 all rents, profits and other income or payments of any kind due or payable or to become due or payable to Assignor as the result of any use, possession or occupancy of all or any portion of the Mortgaged Property or as the result of the use of or lease of any personal property constituting a part of the Mortgaged Property;
- 1.3 all guaranties of the obligations of any tenant under the Lease;
- 1.4 all rights and remedies Assignor may have against any tenant under any Leases;
- 1.5 all rights in and to any proceeds of insurance payable to Assignor and damages or awards resulting from an authority exercising the rights of eminent domain with respect to the Mortgaged Property;
- 1.6 any award or damages payable to Assignor pursuant to any bankruptcy, insolvency or reorganization proceedings affecting any tenant;

1.7 any payments made to Assignor in lieu of rent; and

1.8 all security deposits paid by any tenant under the Leases,

all of which are collectively referred to as "Rents," whether the Rents accrue before or after foreclosure of the Mortgage or during the periods of redemption thereof, all for the purpose of securing (collectively, "Indebtedness Secured Hereby"): (i) payment of all indebtedness evidenced by the Note and all other sums secured by the Mortgage or this Assignment, and (ii) performance and discharge of each and every obligation covenant and agreement of Assignor contained herein and in the Mortgage.

2. Assignor warrants and covenants that it is and will remain the absolute owner of the Rents and Leases free and clear of all liens and encumbrances other than the lien granted herein or of any Permitted Encumbrance (as such term is defined in the Mortgage); that it has not heretofore assigned or otherwise encumbered its interest in any of the Rents or Leases to any persons except pursuant to a Permitted Encumbrance; that it has the right under the Leases and otherwise to execute and deliver this Assignment and keep and perform all of its obligations hereunder; that there are no existing defaults under the provisions of the Leases on the part of any party to the Lease; that all obligations on the part of the landlord under the Leases have been fully complied with; that no Rents have been collected for more than thirty (30) days in advance of their due date or waived, anticipated, discounted, compromised or released, except as disclosed to Assignee; that to Assignor's knowledge, no tenant has any defenses, set-offs or counterclaims against Assignor; that no part of the Mortgaged Property is used as a homestead or an agricultural property; that it will warrant and defend the Leases and Rents against all adverse claims, whether now existing or hereafter arising.

3. Performance of Leases. Assignor further covenants and agrees with Assignee that Assignor shall:

3.1 Faithfully abide by, perform and discharge each and every obligation, covenant and agreement which it is now or hereafter becomes liable to observe or perform under any present or future Lease, and, at its sole cost and expense, enforce or secure the performance of each and every obligation, covenant, condition and agreement to be performed by the tenant under each and every Lease;

3.2 Observe and comply with all provisions of law applicable to the operation and ownership of the Mortgaged Property, including without limitation in the event that the Mortgaged Property consists of residential premises, all applicable provisions of Minn. Stat. § 504B, as amended or recodified, with respect to any security deposits received by it and all

covenants required of it by the provisions of Minn. Stat. § 504B, as amended or recodified;

- 3.3 Give prompt written notice to Assignee of any notice of default on the part of Assignor with respect to any Lease received from any tenant thereunder;
- 3.4 At its sole cost and expense, appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any Lease or the obligations, duties or liabilities of Assignor or any tenant thereunder;
- 3.5 Not lease or otherwise permit the use of all or any portion of the Mortgaged Property for rent that is below the fair market rent for such property;
- 3.6 Not borrow against, pledge or further assign any Rents due under the Leases;
- 3.7 Not permit prepayment of any Rents for more than thirty (30) days in advance nor for more than the next accruing installment of Rents, nor anticipate, discount, compromise, forgive or waive any remedies;
- 3.8 Not waive, excuse, condone or in any manner release or discharge any tenant of or from the obligations, covenants, conditions and agreements by said tenants to be performed under the Leases;
- 3.9 Not permit any tenant to assign or sublet its interest in any Lease unless required to do so by the terms of the Lease and then only if such assignment does not work to relieve the tenant of any liability for payment of and performance of its obligations under the Lease;
- 3.10 Not terminate any Lease or accept a surrender thereof or a discharge of tenant, unless required to do so by the terms of its Lease or unless Assignor and tenant shall have executed a new lease effective upon such termination for the same term of years at a rental not less than as provided in the terminated Lease and on terms no less favorable to the landlord than as in the terminated Lease;
- 3.11 Not consent to a subordination of the interest of any tenant to any party other than Assignee and then only if specifically consented to by Assignee; and
- 3.12 Not amend or modify any Lease or alter the obligations of the parties thereunder excepting in the ordinary and prudent course of business with due regard for the security afforded by Assignee by the Lease and which

does not in any way reduce the rent or diminish the term thereof or the obligations of the tenant thereunder or increase the term of the tenancy or impose additional obligations or burdens on the landlord.

4. Collection of Rents. Assignor will not collect or accept any Rents for the use or occupancy of the Mortgaged Property for more than one month in advance. Security deposits shall not be deemed Rents for purpose of this paragraph.
5. Protecting the Security of this Assignment. Should Assignor fail to perform or observe any covenant or agreement contained in this Assignment, then Assignee, but without obligation to do so and without releasing Assignor from any obligation hereunder, may make or do the same in such manner and to such extent as Assignee may deem appropriate to protect the security hereof, including, specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Assignee, and also the right to perform and discharge each and every obligation, covenant and agreement of Assignor contained in the Leases and in exercising any such powers to pay necessary costs and expenses, employ counsel and pay reasonable attorneys' fees. Assignor will pay immediately upon demand all sums expended by Assignee under the authority of this Agreement, together with interest thereon at the rate stated in the Note, and the same shall be added to said indebtedness and shall be secured hereby and by the Mortgage.
6. Present Assignment. This Assignment shall constitute a perfected, absolute and present assignment, provided that Assignor shall have the right to collect, but not prior to accrual (except as permitted by paragraph 4 above), all of the Rents, and to retain, use and enjoy the same unless and until an Event of Default shall occur under the Mortgage or Assignor shall have breached any warranty or covenant in this Assignment. Any Rents which accrue prior to an Event of Default under the Mortgage but are paid thereafter shall be paid to Assignee.
7. Survival of Obligation to Comply with Mortgage and this Assignment. This Assignment is given as security in addition to the Mortgage. Assignor covenants and agrees to observe and comply with all terms and conditions contained in the Mortgage and in this Assignment and to preclude any Event of Default from occurring under the Mortgage. All of Assignor's obligations under the Mortgage and this Assignment shall survive foreclosure of the Mortgage and Assignor covenants and agrees to observe and comply with all terms and conditions of the Mortgage and this Assignment and to preclude any Event of Default from occurring under the Mortgage throughout any period of redemption after foreclosure of the Mortgage.
8. Default, Remedies. Upon failure to comply with any of the provisions of the Note, including without limitation the failure to make any payment on the Note whether principal, interest, premium or late charge, when and as the same becomes due (whether at date of maturity or at a date fixed for any installment payment or any accelerated payment date or otherwise) or failure to pay, perform or comply when due any other Indebtedness Secured Hereby or upon the occurrence of any Event of Default

specified in the Mortgage or upon the breach of any warranty or covenant in this Assignment, Assignee may, at its option, at any time:

- 8.1 in the name, place and stead of Assignor and without becoming a mortgagee in possession:
 - 8.1.1 enter upon, and operate the Mortgaged Property or retain the services of one or more independent contractors to manage and operate all or any part of the Mortgaged Property;
 - 8.1.2 make, enforce, modify and accept surrender of the Leases;
 - 8.1.3 obtain or evict tenants, collect, sue for, fix or modify the Rents and enforce all rights of Assignor under the Leases;
 - 8.1.4 perform any and all other acts that may be necessary or proper to protect the security of this Assignment; or
 - 8.1.5 in the sole and absolute discretion of Assignee, any combination of the above;
- 8.2 with or without exercising the rights set forth in subparagraph 8.1 above, give or require Assignor to give, notice to any or all tenants under the Leases authorizing and directing the tenants to pay all Rents under the Leases directly to Assignee; and
- 8.3 without regard to waste, adequacy of the security or solvency of Assignor, apply for, and Assignor hereby consents to, the appointment of a receiver of the Mortgaged Property, whether or not foreclosure proceedings have been commenced under the Mortgage, and if such proceedings have been commenced, whether or not a foreclosure sale has occurred which receiver shall have all rights permitted by law, including, but not limited to, the right to enter into leases that may extend beyond the receivership.

The exercise of any of the foregoing rights or remedies and the application of the rents, profits and income pursuant to paragraph 9, shall not cure or waive any Event of Default (or notice of default) under the Mortgage or invalidate any act done pursuant to such notice.

9. Application of Rents, Profits and Income. All Rents collected by Assignee or the receiver each month shall be applied as follows:

- 9.1 to payment of all reasonable fees of the receiver approved by the court;

- 9.2 to payment of all tenant security deposits then owing to tenants under any of the Leases pursuant to the provisions of Minn. Stat. § 504B, as amended or recodified;
- 9.3 to payment of all prior or current real estate taxes and special assessments with respect to the Mortgaged Property, or if the Mortgage requires periodic escrow payments for such taxes and assessments, to the escrow payments then due;
- 9.4 to payment of all premiums then due for the insurance required by the provisions of the Mortgage, or if the Mortgage requires periodic escrow payments for such premiums, to the escrow payments then due;
- 9.5 to payment of expenses incurred for normal maintenance of the Mortgaged Property;
- 9.6 if received prior to any foreclosure sale of the Mortgaged Property to Assignee for payment of the indebtedness secured by the Mortgage or this Assignment, but no such payment made after acceleration of the indebtedness shall affect such acceleration; and
- 9.7 it received during or with respect to the period of redemption after a foreclosure sale of the Mortgaged Property:
 - 9.7.1 if the purchaser at the foreclosure sale is not Assignee, first to Assignee to the extent of any deficiency of the sale proceeds to repay the indebtedness secured by the Mortgage or this Assignment, second to the purchaser as a credit to the redemption price, but if the Mortgaged Property is not redeemed, then to the purchaser of the Mortgaged Property; or
 - 9.7.2 if the purchaser at the foreclosure sale is Assignee, to Assignee to the extent of any deficiency of the sale proceeds to repay the indebtedness secured by the Mortgage or this Assignment and the balance to be retained by Assignee as a credit to the redemption price, but if the Mortgaged Property is not redeemed, then to Assignee, whether or not any such deficiency exists.

The rights and powers of Assignee under this Assignment and the application of Rents under this paragraph 9 shall continue until expiration of the redemption period from any foreclosure sale, whether or not any deficiency remains after a foreclosure sale.

10. No Liability for Assignee. Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability of Assignor under the Leases. This Assignment shall not operate to place upon Assignee responsibility for the control, care, management or repair of the Mortgaged Property or for the carrying out of any of the terms and conditions of the Leases. Assignee shall not be responsible or liable for any waste committed on the Mortgaged Property, for any dangerous or defective condition of the Mortgaged Property, for any negligence in the management, upkeep, repair or control of said Mortgaged Property or for failure to collect the Rents.
11. Assignor's Indemnification. Assignor shall and does hereby agree to indemnify and to hold Assignee harmless of and from any and all claims, demands, liability, loss or damage (including all costs, expenses, and reasonable attorney's fees in the defense thereof) asserted against, imposed on or incurred by Assignee in connection with or as a result of this Assignment or the exercise of any rights or remedies under this Assignment or under the Leases or by reason of any alleged obligations or undertakings of Assignee to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Assignee incur any such liability, the amount thereof, together with interest thereon at the rate stated in the Note, shall be secured hereby and by the Mortgage and Assignor shall reimburse Assignee therefor immediately upon demand.
12. Authorization to Tenant. Upon notice from Assignee that it is exercising the remedy set forth in paragraph 8.2 of this Assignment, the tenants under the Leases are hereby irrevocably authorized and directed to pay to Assignee all sums due under the Leases, and Assignor hereby consents and directs that said sums shall be paid to Assignee without the necessity for a judicial determination that a default has occurred hereunder or under the Mortgage or that Assignee is entitled to exercise its rights hereunder, and to the extent such sums are paid to Assignee, Assignor agrees that the tenant shall have no further liability to Assignor for the same. The signature of Assignee alone shall be sufficient for the exercise of any rights under this Assignment and the receipt of Assignee therefor to any such tenant or occupant of the Mortgaged Property. Checks for all or any part of the Rents collected under this Assignment shall upon notice from Assignee be drawn to the exclusive order of Assignee.
13. Satisfaction. Upon the payment in full of all indebtedness secured hereby as evidenced by a recorded satisfaction of the Mortgage executed by Assignee, this Assignment shall, without the need for any further satisfaction or release, become null and void and be of no further effect.
14. Assignee an Attorney-in-Fact. Assignor hereby irrevocably appoints Assignee, and its successors and assigns, as its agent and attorney-in-fact, which appointment is coupled with an interest, with the right but not the duty to exercise any rights or remedies hereunder and to execute and deliver during the term of this Assignment such instruments as Assignee may deem appropriate to make this Assignment and any further assignment effective, including without limiting the generality of the foregoing, the

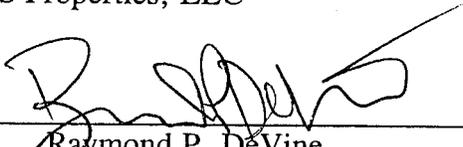
right to endorse on behalf and in the name of Assignor all checks from tenants in payment of Rents that are made payable to Assignee.

15. Assignee Not a Mortgagee in Possession. Nothing herein contained and no actions taken pursuant to this Assignment shall be construed as constituting Assignee a mortgagee in possession.
16. Specific Assignment of Leases. Assignor will transfer and assign to Assignee, upon written notice by Assignee, any and all specific Leases that Assignee requests. Such transfer or assignment by Assignor shall be upon the same or substantially the same terms and conditions as are herein contained, and Assignor will properly file or record such assignments, at Assignor's expense, if requested by Assignee.
17. Unenforceable Provisions Severable. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Assignment invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Assignment shall be held to be invalid, illegal or unenforceable, the validity of other terms hereof shall in no way be affected thereby.
18. Successors and Assigns. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to the respective successors and assigns of Assignor and Assignee, including any purchaser at a foreclosure sale.
19. Captions; Amendments; Notices. The captions and headings of the paragraphs of this Assignment are for convenience only and shall not be used to interpret or define the provisions of this Assignment. This Assignment can be amended only in writing signed by Assignor and Assignee. Any notice from Assignee to Assignor under this Assignment shall be deemed to have been given when given by Assignee in accordance with the requirements for notice by the Mortgagee under the Mortgage.
20. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one instrument.

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the day and year first above written.

ASSIGNOR:

DCS Properties, LLC

By: 

Raymond P. DeVine

Its: President

DCS Properties, LLC

By: Robert J. Sheppard
Robert J. Sheppard

Its: Vice President

By: Todd A. Christopherson
Todd A. Christopherson

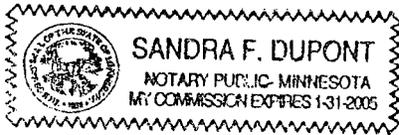
Its: Treasurer

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this 8th day of November, 2000, by Raymond P. DeVine, Robert J. Sheppard and Todd A. Christopherson, the President, Vice President and Treasurer, respectively, of DCS Properties, LLC, a Minnesota limited liability company, on behalf of said limited liability company.

Sandra F. Dupont

Notary Public



Drafted By:
Robert H. Collins
TENNIS AND COLLINS, P.A.
20 North Lake Street, Suite 202
Forest Lake, Minnesota 55025
(651) 464-7400

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EXHIBIT A
Legal Description of Property

The East one-third of Lots 1, 2 and 3, Block 9, and the East 10 feet of the West two-thirds of Lots 1, 2 and 3, Block 9, Centerville, Anoka County, Minnesota.

EXHIBIT C
VEHICLE NOTE

PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$43,757.83	06-05-2003	06-05-2008	40600	5010	510271	CB	

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.

Borrower: RJ SHEPPARD CONSTRUCTION, INC.
1695 Main Street Suite 102
Centerville, MN 55038

Lender: Mainstreet Bank
Forest Lake Office
1650 S Lake St
PO Box 638
Forest Lake, MN 55025-0638
(651) 464-2880

Principal Amount: \$43,757.83

Interest Rate: 9.500%

Date of Note: June 5, 2003

PROMISE TO PAY. RJ SHEPPARD CONSTRUCTION, INC. ("Borrower") promises to pay to Mainstreet Bank ("Lender"), or order, in lawful money of the United States of America, the principal amount of Forty-three Thousand Seven Hundred Fifty-seven & 83/100 Dollars (\$43,757.83), together with interest at the rate of 9.500% per annum on the unpaid principal balance from June 5, 2003, until paid in full.

PAYMENT. Borrower will pay this loan in 60 payments of \$922.11 each payment. Borrower's first payment is due July 5, 2003, and all subsequent payments are due on the same day of each month after that. Borrower's final payment will be due on June 5, 2008, and will be for all principal and all accrued interest not yet paid. Payments include principal and interest. Unless otherwise agreed or required by applicable law, payments will be applied first to accrued unpaid interest, then to principal, and any remaining amount to any unpaid collection costs and late charges. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

PREPAYMENT. Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Mainstreet Bank, Forest Lake Office, 1650 S Lake St, PO Box 638, Forest Lake, MN 55025-0638.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the regularly scheduled payment.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the total sum due under this Note will bear interest from the date of acceleration or maturity at the interest rate on this Note. The interest rate will not exceed the maximum rate permitted by applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Default in Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Insolvency. The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Change In Ownership. Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured (and no event of default will have occurred) if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within ten (10) days; or (2) if the cure requires more than ten (10) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to

**PROMISSORY NOTE
(Continued)**

Loan No: 40600

Page 2

cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including reasonable attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

GOVERNING LAW. This Note will be governed by, construed and enforced in accordance with federal law and the laws of the State of Minnesota. This Note has been accepted by Lender in the State of Minnesota.

DISHONORED ITEM FEE. Borrower will pay a fee to Lender of \$25.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

GENERAL PROVISIONS. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

SECTION DISCLOSURE. This loan is made under Minnesota Statutes, Section 47.59.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:

RJ SHEPPARD CONSTRUCTION, INC.

By: 
ROBERT J SHEPPARD, President of RJ SHEPPARD
CONSTRUCTION, INC.

**EXHIBIT D
LIEN CARD**

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
445 MINNESOTA ST., ST. PAUL, MN 55101
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS
RJ SHEPPARD CONST INC
1695 MAIN ST 102
CENTERVILLE MN 55038

First Class
U.S. Postage
PAID
Permit No. 171
St. Paul, MN

YAP8019

1ST SECURED PARTY

LIEN HOLDER

Year	03	Make	FORD	Model	CMDRW	Title NR	C1920R163
VIN	1FTW33P83EC14759			Security Date	06/03/03	Rebuilt	NO

RETAIN THIS DOCUMENT - See reverse
side of this form for removing this lien.

MAINSTREET BANK
PO BOX 1710
SAINT PAUL MN 55101-0710



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

Case No. BKY 04-43222

In Re:

Robert J. Sheppard and
Susan J. Sheppard,

Debtors: Chapter 7 Case

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR RELIEF FROM STAY**

Mainstreet Bank (“Movant”) submits this Memorandum of Law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

DCS Properties, LLC, a Minnesota limited liability company (“DCS”) executed delivered a Promissory Note (“Note”) dated November 8, 2000 in the original principal amount of \$250,000 to Movant, which Note is secured by a Mortgage, Security Agreement and Fixture Financing Statement (“Mortgage”) filed November 27, 2000 in the Office of the Anoka County Recorder as Document No. 1536486 and Assignment of Leases and Rents filed as Document No. 1536487 (“Assignment of Rents”). Said Mortgage and Assignment of Rents encumber the following legally described real property:

The East one-third of Lots 1, 2 and 3, Block 9, and the East 10 feet of the West two-thirds of Lots 1, 2 and 3, Block 9, Centerville, Anoka County, Minnesota (“Real Property”).

Debtors have listed the said Real Property in their Petition as their homestead. It was not their homestead at the time of the Note.

DCS has failed to make the June 30, 2004 balloon payment of principal and interest on the Note in the amount of \$228,940.37 as of June 30, 2004. The outstanding indebtedness owed by Debtors to Movant on the Note as of June 8, 2004 was \$239,057.28, including principal of \$225,501.46, interest of \$2,198.65 and late fees of \$11,351.17, plus per diem interest through date of payment plus costs, attorneys' fees, and other expenses incurred in connection with the indebtedness pursuant to the terms of the said Note.

Upon information and belief, the subject Real Property has an estimated fair market value of \$330,000 and has a tax year 2005 listed market value of \$183,900 on the Anoka County real estate tax records.

In addition to the Note, RJ Sheppard Construction, Inc., a Minnesota corporation ("RJ Sheppard Construction") executed and delivered to Movant a Promissory Note dated June 5, 2003 ("Vehicle Note") in the original principal amount of \$43,757.83. Performance of the Vehicle Note was secured by a 2003 Ford F350 truck with vehicle identification number of #1FTWW33P83EC14759 ("Vehicle"). Movant has a valid, perfected security interest in the Vehicle as evidenced by lien card issued by the State of Minnesota. Debtors have listed the Vehicle in their Amended Petition. The outstanding indebtedness owed by RJ Sheppard Construction to Movant on the Vehicle Note as of June 8, 2004 was \$38,863.67. The estimated fair market value of the Vehicle is \$31,550.00.

Copies of all material documents identified in this Memorandum of Law are attached to the Affidavit of Michael Thinesen submitted herewith.

The Debtor's "Individual Debtor's Statement of Intention" indicates that the Debtors intend to retain the Real Property.

The Debtor's "Individual Debtor's Statement of Intention" is silent as to the Debtors' intentions with respect to the Vehicle.

ARGUMENT

Under §362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of the creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. §362(d)(1). DCS failed to make payments due under the terms of the Note when due on June 30, 2004. Debtors have little or no actual equity in the Real Property or the Vehicle; hence, Movant lacks adequate protection in the form of an equity cushion in the Real Property or the Vehicle. Furthermore, Debtors have otherwise failed to provide Movant with adequate protection of its interest in the Real Property or Vehicle.

RJ Sheppard Construction failed to keep payments current on the Vehicle Note since Debtors filed their Petition, additionally, Debtors have little or no actual equity in the Vehicle; hence, Movant lacks adequate protection in the form of an equity cushion in the Vehicle. Furthermore, Debtors have otherwise failed to provide Movant with adequate protection of its interest in the Vehicle.

Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay. In Re Tainan, 48 B.R. 250 (Bkrtcy E.D. Pa. 1985); In Re Quinlan, 12 B.R. 516 (Bkrtcy. W.D. Wis. 1981).

Accordingly, Movant is entitled to an order terminating the stay of 11 U.S.C. §362(a) and authorizing Movant to exercise its state law remedies to:

1. Seize possession of the real property legally described as follows, to wit:

The East one-third of Lots 1, 2 and 3, Block 9, and the East 10 feet of the West two-thirds of Lots 1, 2 and 3, Block 9, Centerville, Anoka County, Minnesota (“Real Property”);

foreclose the Mortgage (filed as Document No. 1536486 in the Anoka County Recorder’s Office), collect all rents therefrom pursuant to any valid assignment of rents, and re-sell such Real Property;

2. Seize possession of the 2003 Ford F350 truck with vehicle identification number of #1FTWW33P83EC14759 (“Vehicle”), foreclose its lien thereon and re-sell same, and dispose of the Vehicle;
3. Pursue its other state law remedies, awarding attorneys’ fees and costs as allowed by law relating to the said Real Property or Vehicle; and
4. For such other and further relief as may be just and equitable.

Date: September 28, 2004.

TENNIS AND COLLINS, P.A.

By: /s/ Robert H. Collins
Robert H. Collins (Minn. I.D. 237644)
Attorneys for Movant
20 North Lake Street, Suite 202
Forest Lake, MN 55025
(651) 464-7400

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

Case No. BKY 04-43222

In Re:

Robert J. Sheppard and
Susan J. Sheppard,

**DECLARATION REGARDING
ELECTRONIC FILING AND UNSWORN
CERTIFICATE OF SERVICE**

Debtors: Chapter 7 Case

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

I, Robert H. Collins, declare under penalty of perjury that on September 28, 2004, I mailed copies of the Notice of Hearing and Motion for Relief from Stay, Memorandum of Law, Affidavit in Support of Motion for Relief from Stay, and Proposed Order, which documents were electronically filed on September 28, 2004, by first class mail, postage prepaid, to each entity named below at the address for each entity:

Robert J. Sheppard
1695 Main Street
Centerville, MN 55038

Susan J. Sheppard
1695 Main Street
Centerville, MN 55038

Matthew R. Burton
Attorney for Debtors
100 S. 5th St., Suite 2500
Minneapolis, MN 55402

Randall L. Seaver
Bankruptcy Trustee
12400 Portland Ave. S., Suite 132
Burnsville, MN 55337

Office of the United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

I will scan the original of this Declaration and save it in PDF format and understand it will be inserted into the electronic submission of the motion. I consent to this Declaration being electronically filed with the United States Bankruptcy Court. Tennis and Collins, P.A. will retain the original of this unsworn declaration in it file for 2 years.

Date: September 28, 2004.

 /s/ Robert H. Collins
Robert H. Collins

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

Case No. BKY 04-43222

In Re:

ORDER

Robert J. Sheppard and
Susan J. Sheppard,

Debtors: Chapter 7 Case

A hearing on the motion of Mainstreet Bank for an Order terminating the stay of 11 U.S.C. §362 to allow Movant to exercise its state law remedies to commence foreclosure repossession, foreclosure and re-sale proceedings against the debtors was held before the undersigned Judge of Bankruptcy Court on October 28, 2004. Appearances, if any, are noted in the Court's record.

Based upon the motion papers, the arguments of counsel, and all of the files and proceedings herein,

IT IS HEREBY ORDERED:

The automatic stay of 11 U.S.C. §362 is modified so as to allow the Movant Mainstreet Bank to exercise its state law remedies to:

1. Seize possession of the real property legally described as follows, to wit:

The East one-third of Lots 1, 2 and 3, Block 9, and the East 10 feet of the West two-thirds of Lots 1, 2 and 3, Block 9, Centerville, Anoka County, Minnesota ("Real Property");

foreclose the Mortgage (filed as Document No. 1536486 in the Anoka County Recorder's Office), collect all rents therefrom pursuant to any valid assignment of rents, and re-sell such Real Property;

2. Seize possession of the 2003 Ford F350 truck with vehicle identification number of #1FTWW33P83EC14759 ("Vehicle"), foreclose its lien thereon and re-sell same, and dispose of the Vehicle;
3. Pursue its other state law remedies, awarding attorneys' fees and costs as allowed by law relating to the said Real Property or Vehicle; and
4. For such other and further relief as may be just and equitable.

Date: September 28, 2004.

Robert J. Kressel, Judge
U.S. Bankruptcy Court