

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Aaron J. Keller
SSN XXX-XX-1417

CHAPTER 7 CASE

CASE NO. 04-44473 RJK

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. World Savings Bank, FSB (hereinafter "Secured Creditor"), 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 on November 4, 2004, at 2:00 p.m., or as soon thereafter as counsel can be heard, before the Honorable Robert J. Kressel in Courtroom 8 West of the above entitled Court located at U.S. Courthouse, 300 South 4th Street, Minneapolis, Minnesota.

3. Any response to this motion must be filed and delivered not later than November 1, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than October 26, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on August 11, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1.

Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$158,400.00, as evidenced by that certain Promissory Note dated May 23, 2002, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated May 23, 2002, executed by Aaron Keller, an unmarried man, recorded July 9, 2002, as Document No. 1690338, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B". The property is located in Anoka County, Minnesota and is legally described as follows to-wit:

Lot 6, Block 3, Fawn Acres, Anoka County, Minnesota.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This Secured Creditor's interest in the property is not adequately protected where, as of October 13, 2004, Debtor is delinquent in the making of monthly payments as required for the months of August, 2003 through June, 2004, inclusive, in the amount of \$745.31 each; accruing late charges and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Debtor has no equity in the property and the property is not necessary to an effective organization. The value of the property as scheduled by Debtor is \$215,000.00 subject to Secured Creditor's mortgage in excess of \$172,304.71.

The property is also subject to a second mortgage in favor of US Bank in excess of \$47,396.00.

Since this is a liquidation case, no reorganization is being attempted.

11. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

12. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 13th day of October, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

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

WORLD SAVINGS BANK, FSB
ADJUSTABLE RATE MORTGAGE NOTE
CERTIFICATE OF DEPOSIT INDEX
INITIAL 1 MONTH INTEREST MODIFICATION PERIOD

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE, MY MONTHLY PAYMENT AND MY UNPAID PRINCIPAL BALANCE MY MONTHLY PAYMENT INCREASES, MY INTEREST RATE INCREASES AND MY PRINCIPAL BALANCE INCREASES ARE LIMITED. THIS NOTE IS SECURED BY A SECURITY INSTRUMENT OF THE SAME DATE.

LOAN NUMBER: **0017732249**

DATE **MAY 29, 2002**

BORROWER(S) **AARON KELLER, AN UNMARRIED MAN**

sometimes called "Borrower" and sometimes simply called "I" or "me"

PROPERTY ADDRESS **22863 TIPPECANOE ST NE
 EAST BETHEL, MN 55005**

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay US **\$158,400.00**, called "Principal," plus interest, to the order of the Lender. The Lender is **WORLD SAVINGS BANK, FSB, *** **ITS SUCCESSORS** AND/OR ASSIGNEES, or anyone to whom this Note is transferred

2. INTEREST RATE MODIFICATION PERIOD

This Note contains a "Modification Period." The Modification Period begins one month before the date of my first monthly payment, as specified in Section 4(A) of this Note, and continues until **JULY 01, 2002**.

Beginning on the date that the loan funds are first disbursed to me and continuing up to, but not including, the first day of the Modification Period, I will pay interest at the yearly rate of **5.478%**.

During this Modification Period, I will pay interest at the fixed yearly rate of **2.950%** *. After the Modification Period, I will pay interest as described in Section 3 of this Note

3. INTEREST

(A) Interest Rate

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. The interest rate I will pay may change as described in this Section 3. Interest will be charged on the basis of a twelve month year and a thirty day month.

The interest rate required by this Section 3 is the rate I will pay both before and after any default described in Section 8(B) of this Note

(B) Interest Change Dates

The interest rate I will pay may change on the **1ST** day of **JULY, 2002** and on the same day every month thereafter. Each date on which my interest rate could change is called an "Interest Change Date." The new rate of interest will become effective on each Interest Change Date.

(C) Interest Rate Limit

My lifetime maximum interest rate limit is **11.950%**, called "Lifetime Rate Cap"



1690338

02.33.23.21.0013

RECORDING REQUESTED BY:
WORLD SAVINGS BANK

ABOVE FOR RECORDER'S USE ONLY

WHEN RECORDED MAIL TO:
WORLD SAVINGS
FINAL DOCUMENTATION
CLOSING DEPARTMENT
P.O. BOX 658648
SAN ANTONIO, TX 78266-9548

TAX STATEMENTS FOR THE REAL
PROPERTY DESCRIBED IN THIS
INSTRUMENT SHOULD BE SENT TO:
AARON KELLER
22853 TIPPECANOE ST NE
EAST BETHEL, MN 55006

RECEIVED
SEP 09 2002

Records Management

LOAN NUMBER: 0017732249
NOTE AMOUNT: \$158,400.00

RETURN TO I.A.S. MORTGAGE PURCHASE MONEY MORTGAGE

THIS IS A FIRST MORTGAGE WHICH SECURES A NOTE WHICH CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE, FREQUENCY AND AMOUNT OF PAYMENTS AND PRINCIPAL BALANCE (INCLUDING FUTURE ADVANCES AND DEFERRED INTEREST). AT LENDER'S OPTION THE SECURED NOTE MAY BE RENEWED OR RENEGOTIATED.

THE MAXIMUM AGGREGATE PRINCIPAL BALANCE SECURED BY THIS MORTGAGE IS \$198,000.00 * * WHICH IS 125 % OF THE ORIGINAL PRINCIPAL NOTE AMOUNT.

- I. DEFINITIONS OF WORDS USED IN THIS MORTGAGE
 - (A) Security Instrument. The Mortgage, which is dated MAY 23, 2002, * * * * * will be called the "Security Instrument"
 - (B) Borrower. AARON KELLER, AN UNMARRIED MAN

sometimes will be called "Borrower" and sometimes simply "I" or "me."

(C) Lender. WORLD SAVINGS BANK, FSB, * * * * * ITS SUCCESSORS AND/OR ASSIGNEES, will be called "Lender." Lender is A FEDERAL SAVINGS BANK * * * * * which is organized and exists under the laws of the United States Lender's address is 1901 HARRISON STREET, OAKLAND, CALIFORNIA 94612.

(D) Note. The note signed by Borrower and having the same date as this Security Instrument, including all extensions, renewals, substitutions and modifications thereof, will be called the "Note." The Note shows that I owe Lender the original principal amount of US \$158,400.00 * * ("Note Amount"), plus accrued and deferred interest and such other amounts as stated in the Note I have promised to pay this debt in monthly payments and to pay the debt in full by JUNE 01, 2032.



EXHIBIT B

0017732249

(E) **Property.** The property that is described below in Section III entitled "Description of the Property" will be called the "Property."

(F) **Sums Secured.** The amounts described below in Section II entitled "Borrower's Transfer of Rights in the Property" sometimes will be called the "Sums Secured."

(G) **Person.** Any person, organization, governmental authority or other party will be called "Person."

II. BORROWER'S TRANSFER OF RIGHTS IN THE PROPERTY

I mortgage, irrevocably grant and convey the Property to Lender subject to the terms of this Security Instrument. This means that, by signing this Security Instrument, I am giving Lender those rights that are stated in this Security Instrument and also those rights that the law gives to lenders who hold mortgages on real property I am giving Lender these rights to protect Lender from possible losses that might result if I fail to:

(i) pay all amounts owed to Lender under the Note and all other notes secured by this Security Instrument, called the "Secured Notes," including future advances made by Lender and any changes to the Secured Notes made with the written consent of Lender,

(ii) pay, with interest, any amounts that Lender spends under Paragraphs 2 and 7 below to protect the value of the Property and Lender's rights in the Property, and

(iii) keep all of my other promises and agreements under this Security Instrument, the Secured Notes and any changes to the Secured Notes made with the written consent of Lender.

III. DESCRIPTION OF THE PROPERTY

I give Lender rights in the Property described below.

(i) The property which is located at 22853 TIPPECANOE ST NE, EAST BETHEL, MN 55005. * * * * * The legal description of the Property is attached as Exhibit "A" which is made a part of this Security Instrument. This Property is called the "Described Property"

(ii) All buildings and other improvements that are located on the Described Property,

(iii) All rights in other property that I have as owner of the Described Property. These rights are known as easements, rights and appurtenances attached to the Property,

(iv) All rents or royalties and other income from the Described Property;

(v) All mineral, oil and gas rights and profits, water rights and stock that are part of the Described Property,

(vi) All rights that I have in the land which lies in the streets or roads in front of, behind or next to, the Described Property,

(vii) All fixtures that are now or in the future will be on the Described Property or on the property described in subsection (ii) of this Section.

(viii) All of the rights and property described in subsections (ii) through (vii) of this Section that I acquire in the future.

(ix) All replacements of or additions to the property described in subsections (ii) through (viii) of this Section, and

(x) All of the amounts that I pay to Lender under Paragraph 2 below.

IV. BORROWER'S RIGHT TO GRANT A SECURITY INTEREST IN THE PROPERTY AND BORROWER'S OBLIGATION TO DEFEND OWNERSHIP OF THE PROPERTY

I promise that (i) I lawfully own the Property; (ii) I have the right to mortgage, grant and convey the Property to Lender, and (iii) there are no outstanding claims, charges, liens or encumbrances against the Property, except for those which are of public record

0017732249

BY SIGNING BELOW, I accept and agree to the promises and agreements contained in this Security Instrument and in any rider(s) signed by me and recorded in proper official records

(PLEASE SIGN YOUR NAME EXACTLY AS IT APPEARS BELOW)

BORROWER(S)

Aaron Keller (Seal)
AARON KELLER

(Seal)

(Seal)

(Seal)

(Seal)

(Seal)

ATTACH INDIVIDUAL NOTARY ACKNOWLEDGEMENT

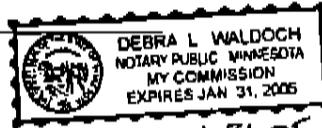
THIS INSTRUMENT WAS DRAFTED BY: WORLD SAVINGS
P.O. BOX 668548
SAN ANTONIO, TX 78265-9548

STATE OF MINNESOTA
COUNTY OF ANOKA

On this 23RD day of MAY 2002, before me, a notary public within and for said County,
personally appeared AARON KELLER, AN UNMARRIED MAN to me known to be the person(s)
described in and who executed the foregoing instrument and acknowledged he executed the same as his
free act and deed.

Debra L. Waldoch

My commission expires _____



1-31-05

WORLD SAVINGS

**E X H I B I T "A"
LEGAL DESCRIPTION**

LOAN NO. 0017732248

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF ANOKA
STATE OF MINNESOTA * * * * * , DESCRIBED AS FOLLOWS.

LOT 6, BLOCK 3, FAWN ACRES, ANOKA COUNTY, MINNESOTA.

TAPE ONLY THE LEGAL DESCRIPTION TO THIS PAGE.

ABSTRACT

Receipt #	8678048040	<input type="checkbox"/> Incorrect/No Reference #
Date/Time	7/9, 9:43	<input type="checkbox"/> Non-standard Document
Document Order	12 of 2	<input type="checkbox"/> Certified Copy
PINs	GMA	
Recordability	GMA	
Filing Fees	\$ 20-	<input type="checkbox"/> Tax Lien/Release
Copy/Additional Pg Fees	\$	<input type="checkbox"/> Transfer
Wall Cert Fees	\$	<input type="checkbox"/> Division
<input type="checkbox"/> Incomplete Form		<input type="checkbox"/> Status
<input type="checkbox"/> Missing Attachment		<input type="checkbox"/> New legal Description
<input type="checkbox"/> No Legal Description		<input type="checkbox"/> GAC
<input type="checkbox"/> Non-existent Legal Description		<input type="checkbox"/> Deferred Specials
<input type="checkbox"/> Part(s) illegible		<input checked="" type="checkbox"/> No Change

DOCUMENT NO. 1690338.0 ABSTRACT

ANOKA COUNTY MINNESOTA

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED IN THIS OFFICE
 FOR RECORD ON JUL 09 2002
 AT 9:43 AM AND WAS DULY RECORDED
 FEES AND TAXES IN THE AMOUNT OF \$480.40 PAID

RECEIPT NO 2002086780
 MARGREN J DEVINE

ANOKA COUNTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES

BY R.P.
 DEPUTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES

1-1-10-2000
 P. J. [Signature]

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Aaron J. Keller
SSN XXX-XX-1417

CHAPTER 7 CASE

CASE NO. 04-44473 RJK

Debtor.

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

ARGUMENT

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of October 13, 2004, Debtor is delinquent for the monthly payments as required for the months of August, 2003 through June, 2004, in the amount of \$745.31 each; accruing late charges and attorneys fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

II. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. § 362(d)(2) WHERE (1) DEBTOR DOES NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under § 362(d)(2) is met where the total of all the encumbrances against the property is in excess of the value of the property. The value of the property as scheduled by Debtor is \$215,000.00 subject to Secured Creditor's mortgage in excess of \$172,304.71.

The property is also subject to a second mortgage in favor of US Bank in excess of \$47,396.00.

Since this is a liquidation case, no reorganization is being attempted.

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected. Secured Creditor is also entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) where Debtor has no equity in the property, and where the property is not necessary to an effective reorganization.

Secured Creditor respectfully requests an Order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 13th day of October, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

08/30/2004 09:31 FAX 8512089399

WILFORD & GESKE

002/002

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

Aaron J. Keller
SSN XXX-XX-1417

CASE NO. 04-44473 RJK

**AFFIDAVIT OF
DARLENE HARKINS**

Debtor.

Darlene Harkins, being first duly sworn on oath, deposes and states:

1. That she is the Bankruptcy Specialist of World Savings Bank, FSB.
2. World Savings Bank, FSB, is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated May 23, 2002, executed by Aaron Keller, an unmarried man, recorded July 9, 2002, as Document No. 1690338. The property is located in Anoka County, Minnesota and is legally described as follows, to-wit:

Lot 6, Block 3, Fawn Acres, Anoka County, Minnesota.

3. That she has reviewed the account records relating to the Keller mortgage loan, account no. 0017732249.
4. That as of October 1, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$157,213.40
Interest through October 1, 2004	8,153.32
Attorney's Fees:	700.00
Late Charges:	573.03
Insurance Advances:	1,226.00
Foreclosure Fees:	1,563.25
Tax Advances:	2,496.21
Appraisal:	300.00
Property Inspection Fees:	79.50
TOTAL:	\$172,304.71

5. That the mortgage loan is delinquent for monthly mortgage payments for the months of August, 2003 through June, 2004 in the amount of \$713.32 each and July, 2004 through October, 2004 in the amount of \$745.31 each.

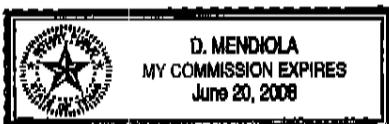
6. This affidavit is given in support of the motion World Savings Bank, FSB for relief from the automatic stay.

WORLD SAVINGS BANK, FSB

By *Darlene Harkins*
Its Bankruptcy Specialist

Subscribed and sworn to before me
this 5 day of October, 2004.

D. Mendiola
Notary Public



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Aaron J. Keller
SSN XXX-XX-1417

Debtor.

CHAPTER 7 CASE

CASE NO. 04-44473 RJK

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on October 13, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Darlene Harkins, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Aaron J. Keller
22853 Tippecanoe Street NE
East Bethel, MN 55005

Julia Christians
120 S 6th Street, Suite 2500
Minneapolis, MN 55402

Robert J. Hoglund
PO Box 130938
Roseville, MN 55113

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 13th day of October, 2004.

/e/ Diana Waletzko
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Aaron J. Keller
SSN XXX-XX-1417

Debtor.

CHAPTER 7 CASE

CASE NO. 04-44473 RJK

ORDER

The above entitled matter came on for hearing upon motion of World Savings Bank, FSB (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on November 4, 2004, at U.S. Courthouse, 300 South 4th Street, Minneapolis, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated May 23, 2002, executed by Aaron Keller, an unmarried man, recorded July 9, 2002, as Document No. 1690338 covering real estate located in Anoka County, Minnesota, legally described as follows, to-wit:

Lot 6, Block 3, Fawn Acres, Anoka County, Minnesota

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3),

this Order is effective immediately.

Dated: _____

Judge of Bankruptcy Court