

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE:

Patrick J. Smithwick,

NOTICE AND MOTION TO
CONVEY REAL ESTATE

Debtor.

BKY 04-44990

TO: JASMINE Z. KELLER, CHAPTER 13 TRUSTEE, and other parties in interest.

Patrick J. Smithwick, Debtor through his attorney, moves the Court for the relief requested below and gives notice of hearing herewith.

1. The Court will hold a hearing on this motion at 9:30 a.m. on October 20, 2004, Courtroom 8 West, United States Courthouse, Minneapolis, Minnesota, or as soon thereafter as counsel can be heard.

2. Any objection to the relief requested herein must be filed and personally served by October 13, 2004, which is five days before the time set for the hearing, excluding Saturdays, Sundays, and holidays, or filed and served by October 8, 2004, which is eight days before the time set for the hearing, excluding Saturdays, Sundays, and holidays.

3. This motion is filed pursuant to Fed. R. Bankr. P. 2002 and 6004 and 11 U.S.C. §363(b); Debtor requests the Court for an order authorizing the conveyance of non-exempt real estate and application of sale proceeds to Debtor's Chapter 13 plan. The petition commencing this case was filed on September 7, 2004. This proceeding is a core proceeding. This Court has jurisdiction pursuant to 28 U.S.C. §§157 and 1334. The case is now pending in this Court.

4. At the time of his Chapter 13 filing, Debtor owned his homestead located at 3634

Rainbow Drive, Minnetonka, Hennepin County, Minnesota, legally described as follows:

Lot 8 except that part thereof lying Easterly of a line drawn from the Northwestern corner of lot 6 to a point on the southeasterly line of said lot 8 distant 50 feet Southwesterly from the most Easterly corner of said lot 8, Block 3, W. A. Ackerman's Groveland Manor, Hennepin County, MN.

5. Debtor has received a purchase offer from Capestone Builders Corporation for \$475,000, cash for the purchase of his home. See Exhibit A. Debtor believes that the sale price is reasonable in view of the present real estate market, the condition of the property, and the prospect of a cash sale. According to the preliminary expense estimate prepared by Edina Realty, Debtor's share of the sale proceeds, after allowance for realtor fees and other closing costs, totals \$102,376.06. See Exhibit B.

6. Debtor intends to apply all sale proceeds to his Chapter 13 proceeding, to pay all allowed claims in full.

7. Debtor's homestead site is approximately 1.79 acres and is within the incorporated limits of the City of Minnetonka, and therefore a portion of the homestead site is non-homestead real estate, making this motion necessary.

WHEREFORE, Debtor moves the Court for an order authorizing him to convey all of his interest in the above-described real estate to Capestone Builders Corporation, and for such other relief as is just and equitable.

/e/ Ian Traquair Ball

Ian Traquair Ball #4285
Attorney for Debtor
326 Plymouth Building
12 South Sixth Street
Minneapolis, MN 55402

Dated: September 28, 2004

Case No. 04-44990

VERIFICATION

Patrick J. Smithwick, Debtor, states that he has read the foregoing motion and that the facts stated therein are true and correct to the best of his knowledge and belief.

Patrick Smithwick

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE:

Patrick J. Smithwick,

Debtor.

DEBTORS' MEMORANDUM
OF LAW

BKY 04-44990

Patrick J. Smithwick, Debtor, submits this memorandum of law in support of the motion for authorization to convey real estate.

At the time of the Chapter 13 filing, Debtor owned his homestead located 3634 Rainbow Drive, City of Minnetonka, Hennepin County, Minnesota. Debtor's homestead was subject to a mortgage in the approximate amount of \$257,600 in favor of Bremer Bank and a second mortgage in the approximate amount of \$16,926 in favor of Fidelity Bank. The homestead was also subject to tax liens in favor of the Internal Revenue Service and the Minnesota Department of Revenue. Bremer Bank foreclosed its mortgage by sheriff sale in March, 2004. The redemption period was scheduled to expire on September 15, 2004. Debtor filed his Chapter 13 petition on September 7, 2004 and gained a 60 day extension of the redemption period pursuant to 11 U.S.C. §108(b).

Debtor has received an offer of purchase from Capestone Builders Corporation in the amount of \$475,000 (Exhibit A). A preliminary closing estimate prepared by Edina Realty estimates that Debtor's share from the sale proceeds, after payment of mortgage debt, realtor fees and costs, and estimated tax liens of \$67,000, will be \$102,376. (Exhibit B.) Debtor

estimates that his only unsecured debt is \$9611 owed Wells Fargo Card Services. It appears that there will be sufficient funds to pay all timely filed claims in full. Because the real estate is approximately 1.79 acres and is within the incorporated limits of the City of Minnetonka, a portion of the homestead is non-exempt property, and therefore an order approving the sale is necessary.

ARGUMENT

Subject to any limitations on a trustee under Chapter 13 of the Bankruptcy Code, a Chapter 13 debtor has, pursuant to 11 U.S.C. §1303, exclusive of the trustee, the rights and powers of a trustee under 11 U.S.C. §363(b). §363(b) provides for sale of property of the estate after notice of hearing, pursuant to Bankruptcy Rules 2002 and 6004. Sale of the property will allow all timely-filed claims to be paid in full in this case, and will not materially affect the rights of any other creditor.

For the above reasons, Debtor requests for an order from this Court authorizing the sale of the debtor's interest in his homestead and directing the closing agent to forward the debtors' share of the proceeds, after allowance for sale costs, mortgage debt, and tax liens, to the Chapter 13 trustee.

/e/ Ian Traquair Ball _____

Ian Traquair Ball #4285
Attorney for Debtor
326 Plymouth Building
12 South Sixth Street
Minneapolis, MN 55402
Tel: (612) 338-1313

Dated: September 28, 2004

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

**CERTIFICATE OF
SERVICE**

Patrick J. Smithwick,

BKY 04-44990

Debtor(s).

I, Brenda Greenhalgh, declare under penalty of perjury that on September 29, 2004, I mailed copies of the foregoing Notice and Motion to Convey Real Estate to each entity named below at the stated addresses.

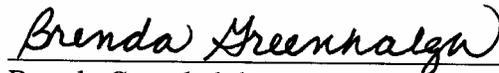
Jasmine Z. Keller
Chapter 13 Trustee
310 Plymouth Building
12 South 6th Street
Minneapolis MN 55402

United States Trustee
1015 US Courthouse
300 South 4th Street
Minneapolis MN 55415

Patrick J. Smithwick
3634 Rainbow Drive
Minnetonka, MN 55345

SEE ATTACHED LIST

Dated: September 28, 2004



Brenda Greenhalgh

BREMER BANK
CO MICHELLE R JESTER ATTY
150 S 5TH ST STE 1800
MINNEAPOLIS MN 55402

FIDELITY BANK
PO BOX 2937
WICHITA KS 67201

INTERNAL REVENUE SVC
STOP 5700
316 N ROBERT ST
ST PAUL MN 55101

MN DEPT OF REVENUE
551 BANKRUPTCY SECTION
PO BOX 64447
ST PAUL MN 55164

WELLS FARGO CARD SVCS
PO BOX 6412
CAROL STREAM IL 60197

Line 26 [Signature]



PURCHASE AGREEMENT

This form approved by the Minnesota Association of REALTORS, which disclaims any liability arising out of use or misuse of this form. © 2003 Minnesota Association of REALTORS, Edina, MN

- 1. Date April 22, 2004
2. Page 1 of

- 3. RECEIVED OF Capetone Builders Corporation
4. Dollars (\$5,000.00)
5. the sum of Five Thousand
6. by CHECK / CASH / NOTE as earnest money to be deposited upon acceptance of Purchase Agreement by all parties, on or before the third business day after acceptance, in the trust account of listing broker but to be returned to Buyer if Purchase Agreement is not accepted by Seller. Said earnest money is part payment for the purchase of the property located at:
9. Street Address: 3634 Rainbow Drive
10. City of Minnetonka MN County of Hennepin State of Minnesota.
11. Legally described as: to conform with above address.
12.
13. including all fixtures on the following property, if any, owned by Seller and used and located on said property, including but not limited to: garden bulbs, plants, shrubs and trees; storm sash, storm doors, screens and awnings; window shades, blinds, traverse and curtain and drapery rods; attached lighting fixtures and bulbs; plumbing fixtures, water heater, heating plants (with any burners, tanks, stokers and other equipment used in connection therewith), built-in air-conditioning equipment, electronic air filter, water softener OWNED / RENTED / NONE built-in
17. humidifier and dehumidifier, liquid gas tank and controls (if the property of Seller), sump pump; attached television antenna, cable TV jacks and wiring; BUILT-INS: dishwashers, garbage disposals, trash compactors, ovens, cook-top stoves, microwave ovens, hood fans, intercoms;
19. ATTACHED: carpeting; mirrors; garage door openers and all controls; smoke detectors; fireplace screens, doors and heatlators; AND: the following personal property:
23. all of which property Seller has this day agreed to sell to Buyer for sum of (\$ 475,000.00) Dollars,
24. Four Hundred Seventy Five Thousand
25. which Buyer agrees to pay in the following manner: earnest money of \$ 5,000.00
26. and \$ 5,000.00 cash on August 22, 2004 7-30-04, the date of closing, and
27. the balance of \$ 465,000.00 by financing in accordance with the attached Addendum:
28. Conventional / FHA / DVA / Assumption / Contract for Deed / Purchase Money Mortgage / Other: construction
29. This Purchase Agreement IS / IS NOT subject to a Contingency Addendum for sale of Buyer's property. (If answer is IS, see attached Addendum.)
30. (If answer is IS NOT, the closing of Buyer's property, if any, may still affect Buyer's ability to obtain financing, if financing is applicable.)
31. This Purchase Agreement IS / IS NOT subject to cancellation of a previously written Purchase Agreement dated
32. (If answer is IS, said cancellation shall be obtained no later than 20. If said cancellation is not obtained by said date, this Purchase Agreement shall become null and void. Buyer and Seller shall immediately sign a Cancellation of Purchase Agreement directing all earnest money paid hereunder to be refunded to Buyer.)
35. This Purchase Agreement IS / IS NOT subject to a Vacant Land Addendum. (If answer is IS, see attached Addendum.)
36. Buyer has been made aware of the availability of property inspections. Buyer Elects / Declines to have a property inspection performed at Buyer's expense.
37. This Purchase Agreement IS / IS NOT subject to an Inspection Addendum. (If answer is IS, see attached Addendum.)
38. DEED/MARKETABLE TITLE: Upon performance by Buyer, Seller shall deliver a Warranty Deed or Other: Deed
39. joined in by spouse, if any, conveying marketable title, subject to:
40. (A) building and zoning laws, ordinances, state and federal regulations; (B) restrictions relating to use or improvement of the property without effective forfeiture provisions; (C) reservation of any mineral rights by the State of Minnesota; (D) utility and drainage easements which do not interfere with existing improvements; (E) rights of tenants as follows (unless specified, not subject to tenancies);
44. (F) others (must be specified in writing);
45. BUYER SHALL PAY / SELLER SHALL PAY on date of closing any deferred real estate taxes (e.g., Green Acres, etc.) or special assessments, payment of which is required as a result of the closing of this sale.
47. BUYER AND SELLER SHALL PRORATE AS OF THE DATE OF CLOSING SELLER SHALL PAY ON DATE OF CLOSING all installments of special assessments certified for payment with the real estate taxes due and payable in the year of closing.
48. BUYER SHALL ASSUME / SELLER SHALL PAY on date of closing all other special assessments levied as of the date of this Agreement.
50. BUYER SHALL ASSUME / SELLER SHALL PROVIDE FOR PAYMENT OF special assessments pending as of the date of this Agreement
51. for improvements that have been ordered by any assessing authorities. (Seller's provision for payment shall be by payment into escrow of two (2) times the estimated amount of the assessments or less, as required by Buyer's lender.)
53. Buyer shall pay any unpaid special assessments payable in the year following closing and thereafter, the payment of which is not otherwise herein provided.
54.
55. As of the date of this Agreement, Seller represents that Seller HAS / HAS NOT received a notice regarding any new improvement project from any assessing authorities, the costs of which project may be assessed against the property. Any such notice received by Seller after the date of this Agreement and before closing will be provided to Buyer immediately. If notice of a pending special assessment is issued after the date of this Agreement and on or before the date of closing, then the parties may agree in writing, on or before the date of closing, to pay, provide for the payment of, or assume the special assessments. In the absence of such agreement, either party may unilaterally pay, provide for the payment of, or assume such special assessments. In the absence of said agreement, or said unilateral election, either party may declare this Purchase Agreement null and void. Buyer and Seller shall immediately sign a Cancellation of Purchase Agreement directing all earnest money paid hereunder to be refunded to Buyer.

MN:PA-1 (10/03)

[Signature]

ER 170-1 (08/02)

Edina Realty

PURCHASE AGREEMENT
83, Page 2

64. **TITLE & EXAMINATION:** Within a reasonable time after acceptance of this Agreement, Seller shall provide
 65. evidence of title, which shall include proper searches covering bankruptcies, state and federal judgments and liens,
 66. and levied and pending Special Assessments to Buyer or Buyer's designated title service provider, as follows:
67. If property is abstract, Seller shall provide either (1) a commitment for an owner's policy of title insurance on a current
 68. ALTA form issued by an insurer licensed to write title insurance in Minnesota. Seller shall pay the cost of an owner's policy, including the
 69. entire premium, title examination fee and the costs of evidence of title for such title insurance policy if no lender's policy is obtained; or only
 70. the additional cost of obtaining a simultaneously issued owner's policy if a lender's policy is obtained (Buyer
 71. shall pay the premium and the title examination fee for the lender's policy); or (2) an abstract of title certified to date.
 72. Seller shall pay for all abstracting fees and surrender any abstract in Seller's possession or control to Buyer at closing.
73. If property is Torrens, Seller shall provide, at Buyer's option and request, either (1) a Registered Property Abstract
 74. (RPA) certified to date; or (2) a commitment for an owner's policy of title insurance on a current ALTA form issued by
 75. an insurer licensed to write title insurance in Minnesota. Seller shall be responsible to pay, under either option, only
 76. those costs necessary to prepare the RPA or commitment. Buyer shall, at Buyer's option, pay for either the Attorney's
 77. Opinion or the title insurance premium and examination fee.
78. Seller shall use Seller's best efforts to provide marketable title by the date of closing. In the event Seller has not
 79. provided marketable title by the date of closing, Seller shall have an additional 30 days to make title marketable or, in
 80. the alternative, Buyer may waive title defects by written notice to Seller. In addition to the 30-day extension,
 81. Buyer and Seller may by mutual agreement further extend the closing date. Lacking such extension, either party
 82. may declare this Purchase Agreement null and void; neither party shall be liable for damages hereunder to the other.
 83. Buyer and Seller shall immediately sign a Cancellation of Purchase Agreement directing all earnest money paid hereunder to be refunded
 84. to Buyer.
85. **SUBDIVISION OF LAND:** If this sale constitutes or requires a subdivision of land owned by Seller, Seller shall pay
 86. all subdivision expenses and obtain all necessary governmental approvals. Seller warrants that the legal description of
 87. the real property to be conveyed has been or will be approved for recording as of the date of closing. Seller warrants
 88. that the buildings are or will be constructed entirely within the boundary lines of the property. Seller warrants
 89. that there is a right of access to the property from a public right-of-way. These warranties shall survive the delivery of
 90. the deed or contract for deed.
91. Seller warrants that prior to the closing, payment in full will have been made for all labor, materials, machinery,
 92. fixtures or tools furnished within the 120 days immediately preceding the closing in connection with construction,
 93. alteration or repair of any structure on, or improvement to, the property.
94. Seller warrants that Seller has not received any notice from any governmental authority as to condemnation
 95. proceedings, violation of any law, ordinance or regulation, if the property is subject to restrictive covenants, Seller
 96. warrants that Seller has not received any notice from any person or authority as to a breach of the covenants. Any
 97. such notices received by Seller will be provided to Buyer immediately.
98. Seller agrees to allow reasonable access to the property for performance of any surveys or inspections agreed to herein.
99. **RISK OF LOSS:** If there is any loss or damage to the property between the date hereof and the date of closing for any reason, including
 100. fire, vandalism, flood, earthquake or act of God, the risk of loss shall be on Seller. If the property is destroyed
 101. or substantially damaged before the closing date, this Purchase Agreement shall become null and void, at
 102. Buyer's option. Buyer and Seller shall immediately sign a Cancellation of Purchase Agreement directing all earnest money paid hereunder
 103. to be refunded to Buyer.
104. **TIME OF ESSENCE:** Time is of the essence in this Purchase Agreement.
105. **ENTIRE AGREEMENT:** This Purchase Agreement, any attached exhibits and any addenda or amendments signed
 106. by the parties shall constitute the entire agreement between Seller and Buyer and supersede any other written or
 107. oral agreements between Seller and Buyer. This Purchase Agreement can be modified or canceled only in writing signed by
 108. Seller and Buyer or by operation of law. All monetary sums are deemed to be United States currency for purposes of this agreement.
 109. Buyer or Seller may be required to pay certain closing costs which may effectively reduce the proceeds from the sale or increase the cash
 110. outlay at closing.
111. **ACCEPTANCE:** Buyer understands and agrees that this Purchase Agreement is subject to acceptance by Seller in writing. The delivery
 112. of all papers and monies shall be made at the listing broker's office.
113. **DEFAULT:** If Buyer defaults in any of the agreements herein, Seller may terminate this Purchase Agreement, and payments made
 114. hereunder may be retained by Seller as liquidated damages. If this Purchase Agreement is not so
 115. terminated, Buyer or Seller may seek actual damages for breach of this Agreement or specific performance of this
 116. Agreement; and, as to specific performance, such action must be commenced within six (6) months after such right of
 117. action arises.
118. **NOTICE REGARDING PREDATORY OFFENDER INFORMATION:** Information regarding the predatory offender registry
 119. and persons registered with the predatory offender registry under MN Statute, 243.166, may be obtained by contacting
 120. the local law enforcement offices in the community where the property is located, or the Minnesota Department of
 121. Corrections at (651) 642-0200, or from the Department of Corrections Web site at www.corc.state.mn.us.



PURCHASE AGREEMENT

122. Address 3634 Rainbow Drive
123. Page 3 Date April 22, 2004

- 124. Buyer shall pay PRORATED FROM DAY OF CLOSING 12ths / ALL / NONE real estate taxes due and payable in the year 04.
- 125. Seller shall pay PRORATED TO DAY OF CLOSING 12ths / ALL / NONE real estate taxes due and payable in the year 04 if the closing date is changed, the real estate taxes paid shall, if prorated, be adjusted to the new closing date. Seller warrants taxes due and payable in the year 04 will be FULLY PART / NON- homestead classification. If part- or non-homestead classification is circled.
- 126. Seller agrees to pay Buyer at closing \$ 0.00
- 129. toward the non-homestead real estate taxes. Buyer agrees to pay any remaining balance of non-homestead taxes when they become due and payable. Buyer shall pay real estate taxes due and payable in the year following closing and thereafter, the payment of which is not otherwise herein provided. No representations are made concerning the amount of subsequent real estate taxes.
- 130. **POSSESSION:** Seller shall deliver possession of the property not later than Immediately after closing.
- 131. All interest, homeowner's association dues, rents and all charges for city water, city sewer, electricity and natural gas shall be prorated between the parties as of date of closing. Buyer shall pay Seller for remaining gallons of fuel oil or liquid petroleum gas on the day of closing, at the rate of the last fill by Seller. Seller agrees to remove **ALL DEBRIS AND ALL PERSONAL PROPERTY NOT INCLUDED HEREIN** from the property by possession date.

137. **ENVIRONMENTAL CONCERNS:** To the best of Seller's knowledge, there are no hazardous substances or underground storage tanks except herein noted:

- 138. _____
- 139. _____
- 140. SELLER WARRANTS THAT THE PROPERTY IS EITHER DIRECTLY OR INDIRECTLY CONNECTED TO:
- 141. CITY SEWER YES NO / CITY WATER YES NO
- 142. SELLER / BUYER AGREES TO PROVIDE WATER QUALITY TEST RESULTS IF REQUIRED BY GOVERNING AUTHORITY AND/OR LENDER.
- 143. SELLER / BUYER AGREES TO PROVIDE, IF REQUIRED BY THE TERMS OF THIS PURCHASE AGREEMENT OR BY GOVERNING AUTHORITY AND/OR LENDER, A LICENSED INSPECTOR'S SEPTIC SYSTEM INSPECTION REPORT OR NOTICE INDICATING IF THE SYSTEM COMPLIES WITH APPLICABLE REGULATIONS. NOTICE: A VALID CERTIFICATE OF COMPLIANCE FOR THE SYSTEM MAY SATISFY THIS OBLIGATION. NOTHING IN LINES 143 TO 146 SHALL OBLIGATE SELLER TO UPGRADE, REPAIR OR REPLACE THE SEPTIC SYSTEM, UNLESS OTHERWISE AGREED TO IN THIS PURCHASE AGREEMENT.
- 144. BUYER HAS RECEIVED THE WELL DISCLOSURE STATEMENT OR A STATEMENT THAT NO WELL EXISTS ON THE PROPERTY, AND A SEPTIC SYSTEM DISCLOSURE STATEMENT OR A STATEMENT THAT NO SEPTIC SYSTEM EXISTS ON OR SERVES THE PROPERTY, AS REQUIRED BY MINNESOTA STATUTES.

- 151. SELLER WARRANTS THAT CENTRAL AIR-CONDITIONING, HEATING, PLUMBING AND WIRING SYSTEMS USED AND LOCATED ON SAID PROPERTY WILL BE IN WORKING ORDER ON DATE OF CLOSING, EXCEPT AS NOTED IN THIS AGREEMENT.
- 152. BUYER HAS THE RIGHT TO A WALK-THROUGH REVIEW OF THE PROPERTY PRIOR TO CLOSING, TO ESTABLISH THAT THE PROPERTY IS IN SUBSTANTIALLY THE SAME CONDITION AS OF THE DATE OF PURCHASE AGREEMENT. SELLER AGREES TO NOTIFY BUYER IMMEDIATELY IN WRITING OF ANY SUBSTANTIVE CHANGES FROM ANY PRIOR REPRESENTATIONS REGARDING THE PHYSICAL CONDITION OF THE PROPERTY.
- 153. BUYER ACKNOWLEDGES THAT NO ORAL REPRESENTATIONS HAVE BEEN MADE REGARDING POSSIBLE PROBLEMS OF WATER IN BASEMENT OR DAMAGE CAUSED BY WATER OR ICE BUILDUP ON ROOF OF THE PROPERTY, AND BUYER RELIES SOLELY IN THAT REGARD ON THE FOLLOWING STATEMENT BY SELLER:
- 154. SELLER HAS / HAS NOT HAD A WET BASEMENT AND HAS / HAS NOT HAD ROOF, WALL OR CEILING DAMAGE CAUSED BY WATER OR ICE BUILDUP. BUYER HAS / HAS NOT RECEIVED A SELLER'S PROPERTY DISCLOSURE STATEMENT OR A SELLER'S DISCLOSURE ELECTION FORM. BUYER HAS RECEIVED THE INSPECTION REPORTS, IF REQUIRED BY MUNICIPALITY.

163. **NOTICE**
164. Tim Berg is Seller's Agent / Buyer's Agent Dual Agent Facilitator
(Licensee) (circle one)

165. Edina Realty is Seller's Agent / Buyer's Agent Dual Agent Facilitator
(Company) (circle one)

166. Mike Mohs is Seller's Agent / Buyer's Agent Dual Agent Facilitator
(Licensee) (circle one)

167. _____
(Company)

168. THIS NOTICE DOES NOT SATISFY MINNESOTA STATUTORY AGENCY DISCLOSURE REQUIREMENTS.

189. **DUAL AGENCY REPRESENTATION**

170. PLEASE CHECK ONE OF THE FOLLOWING SELECTIONS:

171. Dual Agency representation DOES NOT apply in this transaction. Disregard lines 172-185.

172. Dual Agency representation DOES apply in this transaction. Complete the disclosure in lines 173-185.

173. Broker represents both the Seller(s) and the Buyer(s) of the property involved in this transaction, which creates a dual agency. This means that Broker and its salespersons owe fiduciary duties to both Seller(s) and Buyer(s). Because the parties may have conflicting interests, Broker and its salespersons are prohibited from advocating exclusively for either party. Broker cannot act as a dual agent in this transaction without the consent of both Seller(s) and Buyer(s). Seller(s) and Buyer(s) acknowledge that:

174. (1) confidential information communicated to Broker which regards price, terms, or motivation to buy or sell will remain confidential unless Seller(s) or Buyer(s) instructs Broker in writing to disclose this information. Other information will be shared;

175. (2) Broker and its salespersons will not represent the interest of either party to the detriment of the other; and

176. (3) within the limits of dual agency, Broker and its salespersons will work diligently to facilitate the mechanics of the sale.

177. With the knowledge and understanding of the explanation above, Seller(s) and Buyer(s) authorize and instruct Broker and its salespersons to act as dual agents in this transaction.

178. _____ (Seller) *[Signature]*

179. _____ (Buyer) *[Signature]* 4-22-04

180. _____ (Buyer) **Capstone Builders Corp.**

181. _____ (Date)

Edina Realty

PURCHASE AGREEMENT

186. Address 3634 Rainbow Drive

187. Page 4 Date April 22, 2004

188. I ACKNOWLEDGE THAT I HAVE RECEIVED AND HAD THE OPPORTUNITY TO REVIEW THE ARBITRATION DISCLOSURE AND
 189. RESIDENTIAL REAL PROPERTY ARBITRATION AGREEMENT.

190. SELLER(S) *[Signature]* BUYER(S) *[Signature]* 4-22-04
 191. SELLER(S) _____ BUYER(S) _____

192. OTHER _____
 193. _____
 194. _____
 195. _____
 196. _____

187. Attached are other addenda which are made a part of this Purchase Agreement. (Enter total number of pages of this Purchase Agreement, including addenda, on line two (2) of page one (1).)

199. I, the owner of the property, except this Agreement and
 200. authorize the listing broker to withdraw said property from
 201. the market, unless instructed otherwise in writing.
 202. I have reviewed all pages of this Purchase Agreement.

I agree to purchase the property for the price and in accordance with the terms and conditions set forth above.
 I have reviewed all pages of this Purchase Agreement.

203. If checked, this Agreement is subject to attached
 204. Counteroffer Addendum.

205. X *[Signature]* 4-22-04 X *[Signature]* 4-22-04
 (Seller's Signature) (Date) (Buyer's Signature) (Date)

206. X P. J. Smith-Ruick X Bruce Harju
 (Seller's Printed Name) (Buyer's Printed Name)

207. X _____ X Capstone Builders Corp
 (Social Security Number - optional) (Marital Status) (Social Security Number - optional) (Marital Status)

208. X _____ X _____
 (Seller's Signature) (Date) (Buyer's Signature) (Date)

209. X _____ X _____
 (Seller's Printed Name) (Buyer's Printed Name)

210. X _____ X _____
 (Social Security Number - optional) (Marital Status) (Social Security Number - optional) (Marital Status)

211. FINAL ACCEPTANCE DATE _____

212. THIS IS A LEGALLY BINDING CONTRACT BETWEEN BUYERS AND SELLERS.
 213. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

MN-PA-4 (10/03)
 The Following is not part of the Minnesota Association of REALTORS® approved form.

My Email address is _____

I have been advised about the benefits of Edina Realty HOME SERVICES PLUS / Home Warranty One.
 I agree to purchase the Edina Realty HOME SERVICES PLUS / Home Warranty One.
 I decline to purchase the Edina Realty HOME SERVICES PLUS / Home Warranty One.

As the Buyer, you have the opportunity to select providers of mortgage financing and/or title closing services. Your choice to either elect or decline to make a selection is not a part of, and has no effect on, the purchase agreement.

My choice for title insurance and closing services is:
 I wish to have Edina Realty Title, Inc. provide title insurance and/or closing services.
 I will arrange for a qualified title insurance company to provide title insurance and closing services.

(Buyer's Signature) _____ Date _____ (Buyer's Signature) _____ Date _____

My choice for mortgage financing is:
 I wish to have Edina Realty Mortgage, Inc. provide mortgage financing.
 I will arrange for a qualified lender to provide mortgage financing.

(Buyer's Signature) _____ Date _____ (Buyer's Signature) _____ Date _____



**FINANCING ADDENDUM
CONVENTIONAL OR PRIVATELY
INSURED CONVENTIONAL MORTGAGE**

This form approved by the Minnesota Association of REALTORS®, which declines any liability arising out of use or misuse of this form.
© 2003 Minnesota Association of REALTORS®, Edina, MN
1. Date April 22, 2004
2. Page _____

3. Addendum to Purchase Agreement between parties dated 4/22, 2004, pertaining to the purchase
4. and sale of the property at 3634 Rainbow Drive Minnetonka MN
5. _____
6. Buyer will apply for and secure at Buyer's expense a CONVENTIONAL PRIVATELY INSURED CONVENTIONAL
(check one)
7. Fixed mortgage in the amount stated in the Purchase Agreement, amortized monthly over a period of
(Fixed, ARM, etc.)
8. not more than 30 years, with an initial mortgage interest rate at no more than 8.000 percent per annum.
9. The mortgage application is TO BE MADE WITHIN FIVE (5) BUSINESS DAYS after the acceptance of this Purchase Agreement.
10. Buyer agrees to use best efforts to secure a commitment for such financing and to execute all documents required to
11. consummate said financing.

12. **FINANCING CONTINGENCY:** This Purchase Agreement is contingent upon the following: (check one)
13. if Buyer cannot secure a commitment for such mortgage, this Purchase Agreement shall become null and void. Buyer and
14. Seller shall immediately sign a Cancellation of Purchase Agreement directing all earnest money paid hereunder to be
15. refunded to Buyer.
16. Buyer shall provide Seller, or Licensee representing or assisting Seller, with a final underwriting approval commitment for the
17. loan specified in this Purchase Agreement, including completed appraisal, and stating all conditions required by the lender to
18. close the loan, on or before 6/22, 2004. If said commitment is not provided by said date, Seller may, at Seller's
19. option, declare this Purchase Agreement null and void up to the date of closing unless Buyer provides the underwriting
20. approval commitment prior to such cancellation. If Seller cancels the Purchase Agreement, Buyer and Seller shall
21. immediately sign a Cancellation of Purchase Agreement directing all earnest money paid hereunder to be refunded to Buyer.
22. If said commitment is not provided by said date and this Purchase Agreement does not close on the closing date specified,
23. this Purchase Agreement shall become null and void. Buyer and Seller shall immediately sign a Cancellation of Purchase
24. Agreement directing all earnest money paid hereunder to be refunded to Buyer. Upon delivery of said commitment
25. to Seller, or Licensee representing or assisting Seller, the responsibility for satisfying all conditions, except
26. work orders, required by said commitment is deemed accepted by Buyer. Upon delivery of said commitment, if the
27. Purchase Agreement does not close on the stated closing date for ANY REASON relating to financing, other than
28. Seller's failure to complete work orders to the extent required by the Purchase Agreement, including but not
29. limited to interest rate and discount points, if any, Seller may, at Seller's option, declare this Purchase Agreement null and void.
30. Buyer and Seller shall immediately sign a Cancellation of Purchase Agreement directing all earnest money paid hereunder to
31. be forfeited to Seller as liquidated damages, or, in the alternative, Seller may seek all other remedies allowed by law.

32. **PRIVATE MORTGAGE INSURANCE (PMI):** PMI may be required by the lending institution. Buyer agrees to pay all subsequent
33. year's mortgage insurance premiums as required by the lending institution. The said mortgage insurance premiums will
34. increase the mortgage amount unless paid in cash at closing.

35. **DISCOUNT POINTS:** If either Buyer or Seller have agreed to pay discount points pursuant to this Purchase Agreement, a
36. Mortgage Discount Points Addendum must be attached.

37. **LOCKING OF MORTGAGE INTEREST RATE ("RATE"):** The Interest rate will be locked with the lender by Buyer:
38. (check one)

39. WITHIN FIVE (5) BUSINESS DAYS OF FINAL ACCEPTANCE OF THIS PURCHASE AGREEMENT; OR
40. AT ANY TIME PRIOR TO CLOSING OR AS REQUIRED BY LENDER.

41. **LENDER COMMITMENT WORK ORDERS:** Nothing in this Purchase Agreement shall be construed as a warranty that
42. Seller will make repairs required by the Lender commitment. However, Seller agrees to pay up to \$ 0.00 to
43. make repairs as required by the Lender commitment. If the Lender commitment is subject to any work orders for which the cost
44. of making said repairs shall exceed this amount, Seller shall have the following options:
45. (A) making the necessary repairs; or
46. (B) negotiating the cost of making said repairs with Buyer; or
47. (C) declaring the Purchase Agreement null and void. Buyer and Seller shall immediately sign a Cancellation of the Purchase
48. Agreement directing all earnest money paid hereunder to be refunded to Buyer, unless Buyer provides for payment of the
49. cost of said repairs or escrow amounts related thereto above the amount specified on line 42 of this Addendum.

50. **OTHER:** Buyer to secure 100% construction financing for the property from State Bank Long Lake
51. through buyers credit line at bank.

52. [Signature] 4-22-04 [Signature] 4-22-2004
(Seller) (Date) (Buyer) (Date)
53. Carol A. Lindholm 4-24-04 Brian Harju - Capestone Builders Corp.
(Buyer) (Date) (Buyer) (Date)

54. **THIS IS A LEGALLY BINDING CONTRACT BETWEEN BUYERS AND SELLERS.**
55. **IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.**
56. MN:FACM (10/03) ER 176 (10/03)



Lines 9, 14
C.B. [Signature]

AMENDMENT TO PURCHASE AGREEMENT

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1. Date April 22, 2004

2. The undersigned parties to a Purchase Agreement dated 4/22 20 04 pertaining to

3. the purchase and sale of the property at 3634 Rainbow Drive, Minnetonka MN

4. hereby mutually agree to amend said Purchase Agreement as follows:

5. _____

6. This entire agreement is contingent upon the Buyer obtaining approval from the City of Minnetonka

7. for the sub-division of the property into three buildable lots.

8. Upon acceptance on this offer, buyer will immediately start the process of the lot sub-division

9. with the city of Minnetonka. Sellers grant buyers until ~~9/30/04~~ 9/30/04 to obtain preliminary approval

10. Buyer shall remove this contingency upon receiving sub-division preliminary approval from

11. the city. Upon receiving preliminary approval, the buyer will deliver to sellers and additional \$5,000

12. earnest money and all earnest money received from buyers shall be non-refundable at this point on

13. _____

14. Buyers and sellers agree to set a closing date on or before August 31, 2004

Sept. 30, 2004

15. _____

16. _____

17. _____

18. _____

19. _____

20. _____

21. _____

22. _____

23. _____

24. _____

25. _____

26. _____

27. _____

28. _____

29. All other terms and conditions of the Purchase Agreement to remain the same.

30. Patrick J. Smadlock 8-10-04 [Signature] 4-22-04
(Seller) (Date) (Date)

31. Carol A. Smithwick 8-10-04 Capstone Builders Corp.
(Seller) (Date) (Date)

32. **THIS IS A LEGALLY BINDING CONTRACT BETWEEN BUYERS AND SELLERS.**
33. **IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.**



**BUYER PURCHASING
"AS IS" ADDENDUM**

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- 1. Date April 22, 2004
- 2. Page _____

- 3. Addendum to Purchase Agreement between parties dated 4/22, 20 04, pertaining to the
- 4. purchase and sale of the property at 3634 Rainbow Drive, Minnetonka MN
- 5. _____

- 6. **CONDITION OF PROPERTY:** The property being purchased by Buyer, including the dwelling, other
- 7. improvements, fixtures, appliances and personal property, is not new, and is being purchased "AS IS."

8. (check appropriate box)

- 9. Buyer has received and had an opportunity to review the *Seller's Property Disclosure Statement*;
- 10. or
- 11. Buyer has received and had an opportunity to review the *Seller's Disclosure Election* form.

- 12. **RIGHT AND DUTY OF INSPECTION:** Buyer shall have the right and duty to inspect the property or to
- 13. have it inspected by a person of Buyer's choice, at Buyer's expense. Buyer shall have the right to make
- 14. a pre-closing inspection of the property to determine that the property is in the same condition as of the date
- 15. of this Addendum.

- 16. **SETTLEMENT IS FINAL:** It is understood that Buyer accepts the property "AS IS." ANY WARRANTIES OF
- 17. PHYSICAL CONDITION OF THE PROPERTY CONTAINED IN THIS PURCHASE AGREEMENT ARE
- 18. VOID. The Seller has no further responsibility or liability with respect to the condition of the property. This
- 19. provision shall survive delivery of the deed or contract for deed.

20. **OTHER:**

21. [Signature] 4-22-04 [Signature] 4-22-04
(Seller) (Date) (Buyer) (Date)

22. Carel A. Smithwick 4-22-04 Capstone Builders Corp.
(Seller) (Date) (Buyer) (Date)

23. **THIS IS A LEGALLY BINDING CONTRACT BETWEEN BUYERS AND SELLERS.**

24. **IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.**



**Seller's Estimated Expense Worksheet and
Affiliated Business Arrangement Disclosure Form**
(See Explanation on Reverse Side)

Date Prepared _____

FROM: Edina Realty, Inc.

TO: _____
PROPERTY 3634 Rainbow Ave

Phone: _____

NOTICE: This is to give you notice that Edina Realty, Inc. has a business relationship with Edina Realty Title, Inc., and R.E. Broker Services, Inc. doing business as HMS of Minnesota-Wisconsin (HMS). HomeServices of America, Inc. is the parent company of Edina Realty Home Services. Edina Realty Home Services is the parent company of Edina Realty, Inc. and Edina Realty Title, Inc. Edina Realty, Inc. and HMS have entered into an agreement to provide home warranty services. These relationships may provide Edina Realty, Inc. with a financial or other benefit.

Set forth below is the estimated charge or range of charges for the settlement services listed. You are NOT required to use the listed provider(s) as a condition for the sale of the subject property. THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

	Phone	Phone	
1. Listing Agent and Company			
2. Selling Agent and Company			
3. SELLING PRICE	*401	\$ 475,000	
4. Present Mortgage	504	\$ 247,452.94	
5. Interest Adjustment (1-month/2 month) if FHA (Notice to Lender Sent for Assumption or Payoff(ER611))	*401	\$ 9,000	
6. Pay Off of C/D, 2nd Mortgage, Home Improvement Loan, Appliance Financing, etc	505	\$ 16,926	TAX LIENS
7. Interest Adjustment (C/D, 2nd Mortgage, etc.)(1 Mo.)	505/508	\$ 1,000	TAX Interest
8. Pre-Payment Penalty on Mortgage	504	\$	
9. Contract for Deed Discount % of \$	506-509 and 403-405	\$	
10. Special Assessments Levied, Certified	1305-1306 or 506-509	\$	
11. Special Assessments, Pending (200% x estimated assessments to be escrowed)	1305 or 506-509	\$	
12. The amount on lines 10 and 11 are based upon figures obtained on _____ date from _____			
13. Plumbers and Municipality Connection Fee (sewer, water)	700 & 701	\$ 28,500	
14. Brokerage Commission	701-704	\$ 205	
15. Broker's Administrative Commission	1101	\$ 295	
16. Settlement Fee to Edina Realty Title, Inc. (\$275.00)	1203	\$ 1615	
17. State Deed Tax	1102	\$ 200	
18. Abstract (\$275.00-\$375.00): RPA Fees (\$150.00-\$200.00) Buyer's title insurance policy premium	1111	\$ 30	
19. Special Assessment Search Fee (\$30.00 per PID)	1201-1204/1205/1305	\$ 150	
20. Recording and Service Fees (Minn. \$50.00-\$150.00)			
21. Balance of Real Estate Taxes Due at Closing (Per Purchase Agreement) Prorate 407 or 511/Collect 1305			
22. Discount Points % of \$	808	\$	
23. Buyer's New Mortgage	801-811	\$	
24. Seller's paying Buyer's closing costs Whatever applies	808	\$	
25. DVA, Funding Fee (Per Purchase Agreement)	808-811	\$	
26. DVA Closing Fee, Tax Service Fee and Misc. Buyer Financing Fees on DVA Loans (approx. \$390.00) (Buyer cannot pay)	808-811	\$	
27. Misc. Buyer Financing Fees charge to Seller on FHA Loans (approx. \$165.00)	1305 or 506-509	\$	
28. Other Expenses: (Survey, Water Test, Soil Test, Sealing Inoperable Well, etc.)		\$	
29. Edina Realty Home Services Plus / Home Warranty One		\$	
30. Association Re-Sale Disclosure Certificate (\$25.00 - \$200.00)		\$	
31. Balance of Association Dues due at closing (Per Purchase Agreement)		\$	
32. Dues Current Letter		\$	
33. Local Building Inspection, if required by Municipality: (Truth in Housing Report, etc.)	1305 or 506-509	\$ 250	shuff
34. Deed Preparation Fee (where applicable)	1305	\$	
35. Document Handling Fee (\$25.00-\$50.00)		\$ 205,623.94	
36. ESTIMATED EQUITY TO SELLER (Line 3 less Line 35)		\$	
37. Less New Contract for Deed to Seller		\$	
38. CASH TO SELLER		\$ 169,376.06	

*Denotes the coordinating line number on the HUD SETTLEMENT STATEMENT. STATE LIEN 267,000.7 (102,376.06)

These estimates are based upon information available at this date and may not agree with actual charges determined at closing. Take time to review these services and charges to ensure that you understand the services being provided. All documents relating to the closing will be available for your review at the closing.

ACKNOWLEDGMENT: I/we have read this disclosure form, and understand that Edina Realty, Inc. is referring me/us to purchase the above-described settlement services and may receive a financial or other benefit as the result of this referral.

Edina Realty, Inc.
Broker

Seller

(Date)

By: _____
Salesperson

(Date)

Seller

(Date)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE:

Harlan L. Rosendahl,

ORDER

Debtor.

BKY 04-44990

At Minneapolis, Minnesota.

The above-entitled case having come before the undersigned Judge of the United States Bankruptcy Court on Debtor's motion, notice having been duly given, and appearances noted in the record, and based on the files and record herein, the Court now hereby orders as follows:

That the above-referenced Debtor is authorized to convey to Capestone Builders Corporation. certain nonexempt real property legally described as follows:

Lot 8 except that part thereof lying Easterly of a line drawn from the Northwestern corner of lot 6 to a point on the southeasterly line of said lot 8 distant 50 feet Southwesterly from the most Easterly corner of said lot 8, Block 3, W. A. Ackerman's Groveland Manor, Hennepin County, MN.

The debtor, or his closing agent, shall remit all of Debtor's share of the closing proceeds to Jasmine Z. Keller, Chapter 13 trustee.

United States Bankruptcy Judge

Dated: