

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

BKY CASE No. 03-37759

Shark Industries, Ltd.

Debtor.

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OBJECTION TO CONFIRMATION OF PLAN REORGANIZATION

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Wright County Economic Development Partnership of Wright County, the City of Rockford and the Initiative Foundation ("Creditor") hereby objects to the Confirmation of the Plan of Reorganization for the reasons stated below.

1. The Creditor is owed \$355,645.32 in principal and \$5,145.00 in interest by the Debtor as of August 1, 2004. The Debtor further owes additional costs and expenses, including attorneys' fees.

2. The debt is secured by a mortgage on the principal place of business of the Debtor in Rockford ("Real Estate") and the personal property assets of the Debtor ("Personal Property"). Copies of the Note, Mortgage and Security Agreement are attached as Exhibits 1, 2 and 3 respectively.

3. Upon information and belief, the Creditor has a third priority interest in the Real Estate and a second priority interest in the Personal Property. Wells Fargo Bank, N.A. ("Wells Fargo") apparently has a first interest in both and is owed approximately \$915,000.00 on its mortgage and approximately \$685,000.00 on its line of credit secured by the Personal Property (see Disclosure Statement). The Small Business Administration ("SBA") apparently has a second priority interest in the Real estate and is owed approximately \$958,000.00 (see Disclosure Statement).

4. The Debtor claims the Real Estate has a market value of \$1,950,000.00.

5. The Debtor claims the Personal Property has a liquidation value of \$586,000.00.

However, the Debtor's inventory has a market value of \$969,000.00.

6. The Debtor proposed to treat the Creditor as totally unsecured in the Plan.

7. Since the Debtor is reorganizing, it must use the value of using the collateral when valuing secured claims, not the liquidation value. See Associates Commercial Corp v. Rash, 520 U.S. 953, 117 S.Ct. 1879, 138 L. Ed 2d 148 (1997).

8. Using the market value of the Real Estate (\$1,950,000.00) and (for purposes of argument only) using the liquidation value of all Personal Property except the inventory and using the market value of inventory of \$969,000.00, the value of the Debtor's assets is at least \$3,394,000.00. There is more than enough value in the secured assets for Wells Fargo (owed a total of \$1,640,000.00), the SBA (owed \$958,000.00), and the Creditor (owed approximately \$347,000.00) to all be treated as fully secured creditors. In fact, there is a \$400,000.00 cushion. Therefore, even if the inventory is valued at only \$569,000.00 and liquidation value is used for all other assets, all three creditors will be treated as fully secured.

9. 11 U.S.C. § 1129(b)(2)(A) provides that all holders of secured claims must retain their liens and receive the value of the secured claim over time with interest or the "indubitable equivalent" of its claim.

10. In this case, the Debtor fails to retain the Creditor's liens or pay it anything on its secured claim.

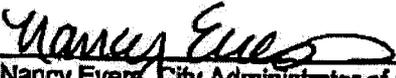
11. As such, the Debtor's Plan must fail as a matter of law until and unless the Debtor complies with 11 U.S.C. § 1129(b)(2)(A) with respect to the Creditor.



**VERIFICATION**

I, Nancy Evers, the City Administrator of City of Rockford and authorized agent for the Creditor, Wright County Economic Development Partnership of Wright County, and the Initiative Foundation, state that the factual allegations made in the foregoing Objection to Confirmation of Plan Reorganization are true and correct according to the best of my knowledge, information, and belief.

Dated: September, 2004.

  
Nancy Evers, City Administrator of City  
of Rockford and Authorized Agent for  
Wright County Economic Development  
Partnership and Initiative Foundation

196317  
GP:1623333 vf

**EXHIBIT 1**

**COPY**

**PROMISSORY NOTE**

\$397,000.00

Rockford, Minnesota  
March ~~10~~<sup>2</sup>, 2001

1. **FOR VALUE RECEIVED, SHARK INDUSTRIES, LTD.**, an Illinois corporation (the "Borrower"), hereby promises to pay to the order of **ECONOMIC DEVELOPMENT PARTNERSHIP OF WRIGHT COUNTY**, a non-profit corporation organized under the laws of Minnesota (the "Lender") the principal sum of Three Hundred Ninety-Seven Thousand and No/100ths (\$397,000.00) Dollars, or so much thereof as may be advanced by the Lender to or for the benefit of the Borrower pursuant to that certain Term Loan Agreement of even date herewith by and between the Lender and the Borrower (the "Loan Agreement") in lawful money of the United States and immediately available funds, together with interest on the outstanding principal balance accruing as of the date hereof, with interest as hereinafter provided. Notwithstanding the foregoing, after an Event of Default as specified below, this Note shall bear interest until fully paid at the rate equal to two percent (2.00%) in excess of the regular rates of interest provided for in this Note. Capitalized terms used and not defined in this Promissory Note shall have the meanings assigned to them in the Loan Agreement.

2. The principal amount of this Promissory Note, or such lesser amount thereof which is advanced to or for the benefit of the Borrower, shall be deemed advanced in three separate parts, in the following amounts and described as follows:

Part A	\$25,000.00
Part B	\$200,000.00
Part C	\$172,000.00

The separate advances shall be described as "Part A," "Part B" and "Part C" of the Promissory Note, and shall separately accrue interest in accordance with this Promissory Note.

3. Interest shall accrue on the outstanding principal balance of Part A of this Promissory Note at the fixed rate of interest equal to seven and one-half percent (7.50%) per annum. Following the occurrence at any time of an Event of Default which triggers a default rate of interest by operation of Section 11.3 of the Loan Agreement, this Promissory Note shall bear interest until fully paid at the rate of nine and one-half percent (9.50%) per annum. Interest shall be calculated on the basis of a 360 day year, but charged for the actual days principal is unpaid.

4. Interest shall accrue on the outstanding principal balance of Part B of this Promissory Note at the rate of four percent (4.00%) per annum. Following the occurrence at any time of an Event of Default which triggers a default rate of interest by operation of Section 11.3 of the Loan

Agreement, this Promissory Note shall bear interest until fully paid at the rate of six percent (6.00%) per annum. Interest shall be calculated on the basis of a 360 day year, but charged for the actual days principal is unpaid.

5. Interest shall accrue on the outstanding principal balance of Part C of this Promissory Note at the rate of eight percent (8.00%) per annum. Following the occurrence at any time of an Event of Default which triggers a default rate of interest by operation of Section 11.3 of the Loan Agreement, this Promissory Note shall bear interest until fully paid at the rate of ten (10.00%) percent per annum. Interest shall be calculated on the basis of a 360 day year, but charged for the actual days principal is unpaid.

6. Commencing on the first (1<sup>st</sup>) day of April, 2001, and continuing on the first (1<sup>st</sup>) day of each month thereafter until the Maturity Date, the Borrower shall make equal monthly payments of \$3,965.37, which shall be allocated to the outstanding balances of Part A, Part B and Part C, as follows:

Part A	\$296.75
Part B	\$2,024.90
Part C	<u>\$1,643.72</u>
TOTAL	\$3,965.37

Lender reserves the right to allocate partial payments and payments made following an Event of Default in any order Lender elects, notwithstanding Borrower's proposed allocation. Notwithstanding any of the foregoing to the contrary, the entire outstanding balance of this Promissory note shall be due in payable in full on the Maturity Date.

7. If not sooner paid in full, the outstanding principal balance of this Promissory Note, together with all interest accrued and unpaid thereon, shall be due and payable in full on February 1, 2011 (the "Maturity Date").

8. All payments and prepayments shall, at the option of the Lender, be applied first to any costs of collection, second to any late charges, third to accrued interest and the remainder thereof to principal.

9. This Promissory Note may be prepaid, in whole or in part, at the option of the Borrower, without prepayment premium or penalty. This Promissory Note is subject to mandatory prepayment, at the option of the Lender, as provided herein and in the Loan Agreement.

10. This Promissory Note is issued pursuant to the terms and provisions of the Loan Agreement and is entitled to all of the benefits provided for in said agreement. All capitalized terms used and not defined herein shall have the meanings assigned to them in the Loan Agreement.

11. Upon the occurrence at any time of an Event of Default or at any time thereafter, the outstanding principal balance hereof plus accrued interest hereon plus all other amounts due hereunder shall, at the option of the Lender, be immediately due and payable, without notice of demand.

12. The occurrence at any time of an Event of Default or at any time thereafter, the Lender shall have the right to set off any and all amounts due hereunder by the Borrower to the Lender against any indebtedness or obligation of the Lender to the Borrower.

13. If any payment of principal or interest due hereunder is not paid with ten (10) days of the due date thereof, the Borrowers shall pay to the Lender a late charge equal to five percent (5%) of the amount of such payment.

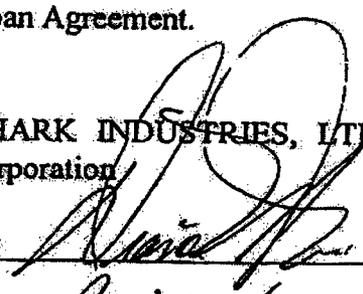
14. The Borrower promises to pay all costs of collection of this Promissory Note, including, but not limited to, attorneys' fees paid or incurred by the Lender on account of such collection, whether or not suit is filed with respect thereto and whether or not such costs are paid or incurred, or to be paid or incurred, prior to or after the entry of judgment.

15. Demand, presentment, protest and notice of nonpayment and dishonor of this Promissory Note are hereby waived.

16. This Promissory Note shall be governed by and construed in accordance with the laws of the State of Minnesota.

17. As used herein, the term "Event of Default" shall mean and include any one or more of the events specified as "Events of Default" in the Loan Agreement.

SHARK INDUSTRIES, LTD., an Illinois  
corporation

By  \_\_\_\_\_

Its President \_\_\_\_\_

EXHIBIT 2

733128

OFFICE OF COUNTY REGISTER  
WRIGHT COUNTY, MINNESOTA  
CERTIFIED TO BE FILED  
AND/OR RECEIVED ON

01 MAR -5 AM 10:23

Exempt from WRIGHT COUNTY  
REGISTRATION TAX  
Douglas W. Kimberlin  
County Treasurer

\$24.50 CK# 1009

This Mortgage is exempt from Mortgage Registry Tax, in accordance with the provisions of Minnesota Statutes Sections 287.04(g) and 272.02

MORTGAGE,  
SECURITY AGREEMENT AND  
ASSIGNMENT OF RENTS AND LEASES

THIS INDENTURE (hereinafter referred to as the "Mortgage") made this 2nd day of March, 2001, by and between SHARK INDUSTRIES, LTD., an Illinois corporation (the "Mortgagor"), whose mailing address is 500 Elk Drive, Rockford, Minnesota 55373, and whose tax identification number is 36-3225428 and ECONOMIC DEVELOPMENT PARTNERSHIP OF WRIGHT COUNTY, a Minnesota non-profit corporation (the "Mortgagee") whose mailing address is P.O. Box 525, Rockford, Minnesota 55373.

This Mortgage shall secure the original principal amount of Three Hundred Ninety-Seven Thousand and No/100ths (\$397,000.00) Dollars which amount constitutes the "Initial Amount of the Debt" within the meaning of Minnesota Statutes Section 287.03, and this Mortgage is further intended to secure the entire "Secured indebtedness" as hereinafter defined.

This Mortgage allows for future advances, but the amount of any advance is not currently known. The Mortgagee is aware of Minnesota Statutes Section 287.05, bdivision 5, and intends to comply with the requirements contained therein.

This Mortgage is given to secure a loan for the construction of an improvement on the real property described herein, and is a "construction mortgage" within the meaning of Minnesota Statutes Chapter 336.

To secure the payment to the Mortgagee, its successors and assigns, of: (i) the Initial Amount of the Debt, as evidenced by the terms of that certain Promissory Note of even date herewith, in the principal sum of \$397,000.00, issued by the Mortgagor to the order of the Mortgagee (the "Note"), together with all extensions, amendments and renewals thereof, plus interest thereon at the rate stated in the Note, the balance of the Note being due and payable on or before February 1, 2011, unless called by Mortgagee as provided in the Note; (ii) for and to secure the payment to the Mortgagee,

Ref to Commercial Partners 7:46  
330 2nd Ave So 71820  
Mpls, MN 55401

733128

its successors and assigns, at the times demanded and with interest thereon at the same rate(s) specified in the Note of all sums advanced in protecting the lien of this Mortgage; (iii) in payment of taxes on the "Mortgaged Premises" (as hereinafter defined); (iv) in payment of insurance premiums covering all improvements thereon; (v) in payment of principal and interest on prior liens; (vi) in payment of expenses and attorneys' fees herein provided for and all sums advanced for any other purpose authorized herein or authorized by law (the Note and all such sums, together with interest thereon, being collectively referred to herein as the "Secured Indebtedness"); (vii) for and to secure the performance of all of the covenants and agreements contained in the Note and this Mortgage, and any extensions, amendments and renewals thereof; and (ix) in consideration of the sum of \$1.00 paid by the Mortgagee to the Mortgagor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor does hereby MORTGAGE, GRANT, BARGAIN, SELL AND CONVEY unto the Mortgagee, its successors and assigns, forever, and GRANTS A SECURITY INTEREST to the Mortgagee, its successors and assigns, in the following properties (all of the following being hereafter collectively referred to as the "Mortgaged Premises"):

#### **A. Real Property**

All the tracts or parcels of real property lying and being in the County of Wright, State of Minnesota (the "Land"), all as more fully described in Exhibit A attached hereto and made a part hereof, together with all the estates and rights in and to the Land and in and to lands lying in any and all streets, lanes, alleys, passages and roads adjoining the Land, and together with all buildings, structures, improvements, fixtures, annexations, access rights, easements, rights of way or use, servitudes, licenses, tenements, hereditaments, appurtenances, minerals, mineral rights, water and water rights, now or hereafter belonging or pertaining to the Land; and

#### **B. Personal Property**

All buildings, structures, equipment, fixtures, improvements, building supplies and materials and personal property now or hereafter attached to, located in, placed in or necessary to the use of the improvements on the Mortgaged Premises including, but without being limited to, all machinery, fittings, fixtures, apparatus, equipment or articles used to supply heating, gas, electricity, air conditioning, water, light, waste disposal, power, refrigeration, ventilation, and fire and sprinkler protection as well as all elevators, escalators, motors, overhead cranes, hoists and assists, engines and machinery, boilers, ranges, furnaces, oil burners or units thereof, communication or intercom systems, dynamos, transformers, and all furnishings, decorations, appliances, supplies, draperies, maintenance and repair equipment, floor coverings, screens, storm windows, blinds, awnings and shades, locks, fences, trees, shrubbery and plants, as well as all renewals, replacements, proceeds, additions, extensions, improvements, betterments, accessories, increases, parts, fittings and substitutes thereof, together with all interest of the Mortgagor in any such items hereafter acquired, and all products and proceeds thereof, including without limitation all accounts, instruments, chattel paper, other rights to payment, money, insurance proceeds and general intangibles related to the foregoing property, and all refunds of insurance premiums due or to become due under all insurance policies covering the foregoing property, all of which personal property mentioned herein shall be

deemed fixtures and accessory to the freehold and a part of the realty and not severable in whole or in part without material injury to the Mortgaged Premises, but excluding therefrom the trade fixtures, inventory and removable personal property of any tenant or licensee of the Mortgaged Premises; and

**C. Leases, Rents, Issues and Profits**

All leases, rents, issues and profits now due or which may hereafter become due under or by virtue of any present or future lease, license, sublease, or agreement, whether written or verbal, for the use or occupancy of the Mortgaged Premises or any part thereof, whether before or after foreclosure or during any redemption period after Sheriff's foreclosure sale and the Mortgagee hereby shall have the power irrevocably to take possession of the Mortgaged Premises, manage, control, operate and lease the Mortgaged Premises and collect such leases, rents, issues and profits; and

**D. Judgments and Awards**

Any and all awards or compensation made by any governmental or other lawful authorities for the taking or damaging by eminent domain of the whole or any part of the Mortgaged Premises or any rights appurtenant thereto, including any awards for a temporary taking, change of grade of streets or taking of access; and

**E. After-Acquired Property**

All right, title, and interest of the Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes, and replacements of, and all additions and appurtenants to the items or types of property described in Sections A through D above, which are hereafter acquired by or released to the Mortgagor, or are hereafter constructed, assembled or placed by the Mortgagor on the Mortgaged Premises, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement, or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment, or other act by the Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Mortgagor and specifically described in the granting clause hereof, but at any and all times the Mortgagor will execute and deliver to the Mortgagee any and all such further assurances, mortgages, conveyances, or assignments thereof as the Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

TO HAVE AND TO HOLD the Mortgaged Premises unto the Mortgagee forever.

**ARTICLE I**  
**Mortgagor's**  
**Representations, Warranties**  
**Covenants and Agreements**

The Mortgagor makes and includes in this Mortgage the Statutory Covenants and other provisions set forth in Minnesota Statutes Section 507.15 or in any future Minnesota Statute providing for a statutory form of real estate mortgage, and the Mortgagor makes the following additional representations, warranties, covenants and agreements with the Mortgagee:

**1.1. Good Title; Covenant to Defend.** The Mortgagor represents, warrants and covenants to and with the Mortgagee that: (a) the Mortgagor is the lawful owner of and has good and marketable title to the Mortgaged Premises in fee simple, free and clear of all liens and encumbrances, except for the Permitted Encumbrances set forth on Exhibit B attached hereto and made a part hereof; (b) the Mortgagor has the right and lawful authority to mortgage, grant, sell, transfer and convey the Mortgaged Premises to the Mortgagee, as provided herein; (c) the Mortgagor owns or will own all chattels and improvements installed on the Mortgaged Premises and the same shall be free and clear of all liens and claims, except those specifically set forth on Exhibit B attached hereto; (d) this Mortgage is and shall remain a valid and enforceable lien on the Mortgaged Premises, subject only to the exceptions referred to above; (e) the Mortgagor will preserve its fee title to the Mortgaged Premises, and will warrant and defend such fee title to the Mortgagee, against all claims and demands of all persons and parties whomsoever; and (f) all buildings, structures and other improvements now or hereafter located on the Land are, or will be, located entirely within the boundaries of the Land and are set back from said boundaries in accordance with all applicable zoning and "set-back" laws and ordinances; (g) the present or contemplated use of the Mortgaged Premises complies with all applicable zoning laws and ordinances; and (h) if the Mortgagor is a corporation or limited liability company, the execution of this Mortgage has been duly authorized by its board of directors or board of governors and no provision of its Articles of Incorporation, Bylaws, Articles of Organization or Operating Agreement requires consent of its stockholders or member to the execution and delivery of this Mortgage.

**1.2. Performance of the Note and Mortgage.** The Mortgagor shall: (i) duly and punctually pay each and every installment of principal and interest and all other sums to become due under and in accordance with the Note, at the time and place and in the manner specified by the Note; (ii) pay all other Secured Indebtedness, as and when the same shall become due; and (iii) duly and punctually perform and observe all of the covenants, agreements and provisions contained herein, in the Note, and in any other instrument given as security for the payment of the Note. No payment or collection of any of the Secured Indebtedness shall reduce the amount secured by this Mortgage.

**1.3. Care of Mortgaged Premises; No Waste.** The Mortgagor shall, at all times, keep and maintain the Mortgaged Premises in good condition, repair and operating condition, and shall not commit, or suffer to be committed, any waste or misuse of the Mortgaged Premises, and shall promptly repair, restore or replace, any buildings, improvements or structures now or hereafter

placed or located on the Mortgaged Premises which may become damaged or destroyed. The Mortgagor shall not, without the prior written consent of the Mortgagee or as contemplated by that certain Term Loan Agreement between the Mortgagor and Mortgagee of even date herewith (the "Loan Agreement") (i) expand any improvements on the Mortgaged Premises, (ii) erect any new improvements, (iii) remove or permit the removal of any buildings, structures or other improvements or fixtures, or (iv) otherwise make any material alterations in any improvements which will alter the basic structure, affect the market value, or change the existing architectural character of the Mortgaged Premises, and the Mortgagor will complete within a reasonable time any structures which are now or at any time in the process of erection. The Mortgagor will not acquiesce in any rezoning classification, modification or public or private restriction which in any way limits or otherwise affects the Mortgaged Premises, or any part thereof. The Mortgagor shall not vacate or abandon the Mortgaged Premises.

**1.4. Payment of Utilities and Operating Costs.** Subject to Section 1.9 hereof, the Mortgagor shall pay, or cause to be paid, when due, all charges made for electricity, gas, heat, water, sewer, and all other utilities and operating costs and expenses, received, furnished or used in connection with the Mortgaged Premises, and will, upon request by the Mortgagee, furnish proper receipt showing payment therefore.

**1.5. Liens.** Subject to Section 1.9 hereof, the Mortgagor shall pay, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of a lien on the Mortgaged Premises, or any part thereof, or on the revenues, rents, issues, income and profits arising therefrom, and in general will do or cause to be done everything necessary so that the lien of this Mortgage shall be fully preserved, at the cost of the Mortgagor, without expense to the Mortgagee. The Mortgagor shall not do, or permit to be done, anything that may in anyway impair the value of the Mortgaged Premises, or weaken, diminish, or impair the security of this Mortgage. No fixtures will be installed on the Mortgaged Premises by the Mortgagor, by any tenant of the Mortgagor, or by any other person subject to a lease, vendor's lien or other lien or claim. Should any fixture be installed to the Mortgages Premises from or after the date hereof, the lien of this Mortgage shall immediately attach to said fixture and shall be prior and superior to all other liens or claims. The Mortgagor will promptly perform and observe, or cause to be performed or observed, all of the terms, covenants, and conditions of all Permitted Encumbrances, as set forth in Exhibit B attached hereto, the noncompliance with which may affect the security of this Mortgage, or may impose duty or obligation upon the Mortgagor or any sublessee or occupant of the Mortgaged Premises or any part thereof, and the Mortgagor shall do or cause to be done all things necessary to preserve in tact and unimpaired all easements, appurtenances, and other interests and rights in favor of or constituting any portion of the Mortgaged Premises.

**1.6. Real Property Taxes and Assessments.** The Mortgagor agrees to pay all real property taxes, assessments, and other similar charges made against the Mortgaged Premises.

**1.7. Mortgage Taxation.** In the event of a court decree or an enactment after the date hereof by any legislative authority of any law imposing upon a mortgagee the payment of the whole or any part of the amounts herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or a mortgagee's interest in the Mortgaged Premises, so as to impose such imposition on the Mortgagee or on the interest of the Mortgagee in the Mortgaged Premises, then, in any such event, the Mortgagor shall bear and pay the full amount of such imposition, provided that if for any reason payment by the Mortgagor of any such imposition would be unlawful, or if the payment thereof would constitute usury or render the Secured Indebtedness wholly or partially usurious, the Mortgagee, at its option, may declare the whole sum secured by this Mortgage with interest thereon to be immediately due and payable, without prepayment premium, or the Mortgagee, at its option, may pay that amount or portion of such impositions as renders the Indebtedness Secured Hereby unlawful or usurious, in which event the Mortgagor shall concurrently therewith pay the remaining lawful and nonusurious portion or balance of said imposition.

**1.8. Compliance with Laws.** Subject to Section 1.9 hereof, the Mortgagor shall comply with all present and future laws, ordinances, regulations, covenants, conditions and restrictions affecting the Mortgaged Premises or the operation thereof, and shall pay all fees or charges of any kind in connection therewith. The Mortgagor shall not, by act or omission, permit any property which is not subject to this Mortgage to rely on the Mortgaged Premises or any part thereof or any interest therein to fulfill any governmental requirement for the character or use of such property; and the Mortgaged Premises shall not rely on any property which is not subject to this Mortgage to fulfill any governmental requirement for the character or use of the Mortgaged Premises. The Mortgagor shall not, by act or omission, impair the integrity of the Mortgaged Premises as a single separate subdivided zoning lot separate and apart from all other lots.

**1.9. Permitted Contests.** Notwithstanding any provision of this Mortgage to the contrary, the Mortgagor shall not be required to: (a) pay any charge referred to Section 1.4 hereof; (b) discharge or remove any lien, encumbrance or charge referred to in Section 1.5 hereof; (c) pay the tax, assessment or other charged referred to in Sections 1.6 and 1.7 hereof, or (d) comply with any statute, law, rule, regulation or ordinance referred to in Section 1.8 hereof, so long as the Mortgagor shall in good faith contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection of the imposition so contested, or the sale, forfeiture or loss of the Mortgaged Premises, or any part thereof to satisfy the same, and further provided that the Mortgagor shall, prior to the date such imposition is due and payable, have given the Mortgagee such reasonable security as may be demanded by the Mortgagee to ensure such payments and prevent any sale or forfeiture of the Mortgaged Premises by reason of such nonpayment. Any such contest shall be prosecuted with due diligence and the Mortgagor shall, after final determination thereof, promptly pay the amount of any such imposition so determined, together with all interest and penalties which may be payable in connection therewith. Notwithstanding the provisions of this Section 1.9, the Mortgagor shall (and if the Mortgagor shall fail so to do, the Mortgagee may but shall not be required to) pay any such imposition notwithstanding such contest if, in the reasonable opinion of

the Mortgagee, the Mortgaged Premises shall be in jeopardy or in danger of being forfeited or foreclosed.

**1.10. Duty to Defend.** The Mortgagor shall promptly notify the Mortgagee of and appear in and defend any suit, action or proceeding that affects the value of the Mortgaged Premises, the Secured Indebtedness, or any right or interest of the Mortgagee under this Mortgage. The Mortgagee may, at its option, elect to appear in or defend any such action or proceeding, and the Mortgagor agrees to indemnify and reimburse the Mortgagee from any and all loss, damage, expense or cost arising out of, or incurred in connection with any such suit, action or proceeding, including, but not limited to, costs of evidence of title and attorneys' fees.

**1.11. Insurance Coverage.** The Mortgagor shall obtain and keep in full force and effect during the term of this Mortgage at its sole cost and expense, the following policies of insurance:

- a. Property insurance, in broad form covering all causes of loss, including the cost of debris removal, together with a vandalism and malicious mischief endorsement, all in the amounts of not less than the full insurable value or full replacement cost, without deduction for depreciation, of the improvements on the Premises, whichever is greater, covering all buildings, structures, fixtures, personal property and other improvements now existing or hereafter erected or placed on the Premises, which insurance shall at all times be in an amount at least equal to the unpaid Secured Indebtedness at any given time.
- b. If the Mortgaged Premises are now or hereafter located in a flood plain as defined by the Federal Insurance Administration, the Mortgagor shall obtain flood insurance in the maximum obtainable amount.
- c. If steam boilers or similar equipment for the generation of steam are located in, on or about the Mortgaged Premises, the Mortgagor shall maintain insurance against loss or damage by explosion, rupture or bursting of such equipment and appurtenances thereto, without a co-insurance clause, in an amount satisfactory to the Mortgagee.
- d. Comprehensive general public liability insurance covering the legal liability of the Mortgagor against claims for bodily injury, death or property damage occurring on, in or about the Mortgaged Premises in such amounts and with such limits as the Mortgagee may reasonably require.
- e. Business interruption insurance in an amount at least equal to coverage over one year's debt service and required escrow account.

All such insurance shall be written on forms and with companies satisfactory to the Mortgagee, shall name as the insured parties the Mortgagor and the Mortgagee as their interests may appear, shall be in amounts sufficient to prevent the Mortgagor from becoming a co-insurer of any

loss thereunder, shall name the Mortgagee as a loss payee, shall bear a satisfactory mortgage clause in favor of the Mortgagee, and shall contain an agreement of the insurer that the coverage shall not be terminated or modified without providing to the Mortgagee thirty (30) days' prior written notice of such termination or modification. All required policies of insurance or acceptable certificates thereof, together with evidence of the payment of current premiums therefor shall be delivered to the Mortgagee. The Mortgagor shall, within thirty (30) days prior to the expiration of any such policy, deliver other original policies or certificates of the insurer evidencing the renewal of such insurance together with evidence of the payment of current premiums therefor. In the event of a foreclosure of this Mortgage or any acquisition of the Mortgaged Premises by the Mortgagee, all such policies and any proceeds payable therefrom, whether payable before or after a foreclosure sale, or during the period of redemption, if any, shall become the absolute property of the Mortgagee to be utilized at its discretion. In the event of foreclosure or the failure to obtain and keep any required insurance, the Mortgagor empowers the Mortgagee to effect insurance upon the Mortgaged Premises at the Mortgagor's expense and for the benefit of the Mortgagee in the amounts and types aforesaid for a period of time covering the time of redemption from a foreclosure sale, and if necessary therefore, to cancel any or all existing insurance policies. The Mortgagor agrees to furnish the Mortgagee with copies of all inspection reports and insurance recommendations received by the Mortgagor from any insurer.

**1.12. Notice of Damage.** The Mortgagor shall give the Mortgagee prompt notice of any damage to or destruction of the Mortgaged Premises and authorize the Mortgagee to make proof of loss if not made promptly by the Mortgagor. In case of loss covered by policies of insurance (whether before or after foreclosure sale), the Mortgagee is hereby authorized at its option and without the consent of the Mortgagor to settle, adjust and compromise any claim arising out of such policies, and to collect and receive the proceeds payable therefrom; provided, that the Mortgagor may itself adjust and collect for any losses arising out of a single occurrence aggregating not in excess of \$25,000.00. Any expense incurred by the Mortgagee in the adjustment and collection of insurance proceeds (including the cost of any independent appraisal of the loss or damage on behalf of the Mortgagee) shall be reimbursed to the Mortgagee first out of any proceeds. So long as the Mortgagor is not in default under the terms of this Mortgage, the proceeds or any part thereof shall be applied to the restoration or repair of the Mortgaged Premises or to reduction of the Secured Indebtedness then most remotely to be paid, whether due or not, without the application of any prepayment premium, the choice of such application to be solely at the discretion of the Mortgagor, otherwise, such choice shall be at the sole discretion of the Mortgagee.

**1.13. Condemnation.** The Mortgagor shall give the Mortgagee prompt notice of any action, actual or threatened, in condemnation or eminent domain. The Mortgagor hereby irrevocably assigns, transfers, and sets over to the Mortgagee, to the extent of the remaining unpaid Secured Indebtedness, the entire proceeds of any award, payment or claim for damages for all or any part of the Mortgaged Premises taken or damaged, whether temporary or permanent, under the power of eminent domain or condemnation, and authorizes the Mortgagee to intervene in any such action in the name of the Mortgagor and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Any expenses incurred by the Mortgagee in intervening in such action or collecting such proceeds shall be reimbursed to the Mortgagee first out

of the proceeds. So long as the Mortgagor is not in default under the terms of this Mortgage, the proceeds or any part thereof shall be applied upon or in reduction of the Secured Indebtedness then most remotely to be paid, whether due or not, without the application of any prepayment premium, or to the restoration or repair of the Mortgaged Premises, the choice of application to be solely at the discretion of the Mortgagor, otherwise, such choice shall be at the sole discretion of the Mortgagee.

**1.14. Restoration of Mortgaged Premises After Loss.** Should any insurance or condemnation proceeds be applied to the restoration or repair of the Mortgaged Premises the restoration or repair shall be done under the supervision of an architect acceptable to the Mortgagee, pursuant to plans and specifications approved by the Mortgagee, and in accordance with all applicable building laws, regulations and ordinances, including, but not limited to, the Accessibility Guidelines set forth in the Americans with Disabilities Act. In such case, the proceeds shall be held by the Mortgagee for such purposes and will from time to time be disbursed by the Mortgagee to defray the costs of such restoration or repair under such safeguards and controls as the Mortgagee may reasonably require to assure completion in accordance with the approved plans and specifications and free of liens or claims. Any surplus which may remain after payment of all costs of restoration or repair may, at the option of the Mortgagee, be applied on account of the Secured Indebtedness then most remotely to be paid, whether due or not, without application of any prepayment premium, or shall be returned to the Mortgagor as its interest may appear, the choice of application to be solely at the discretion of the Mortgagee.

**1.15. Hazardous Substances.** The Mortgagor represents, warrants and covenants to the Mortgagee that, except in compliance with all applicable federal, state and local laws, regulations and ordinances, no toxic or hazardous substance, waste or constituent, as defined in any local, state or federal law, regulation, code or ordinance now existing or hereinafter enacted or amended, governing liability for any such substance, waste or constituent is, or has in the past, been located in, on or released from the Mortgaged Premises. The Mortgagor further represents, warrants and covenants to the Mortgagee that it shall not, nor shall the Mortgagor permit others to, except in compliance with all applicable federal, state and local laws, regulations and ordinances, use the Mortgaged Premises at any time to generate, transport, store, process, treat, or dispose of a toxic or hazardous substance, waste or constituent. The Mortgagor shall not, nor shall the Mortgagor permit others to take, fail to take, or permit any action which may result in a release of any toxic or hazardous substance, waste or constituent in, on, about or from the Mortgaged Premises. The Mortgagor warrants that neither the Mortgagor nor the Mortgaged Premises are subject to any claim for which any local, state or federal law governing liability for any such substance, waste or constituent may apply. Within five (5) business days after learning of the occurrence of (a) any event relating to any toxic or hazardous substance, waste or constituent with respect to the Mortgaged Premises, or (b) the commencement of any litigation, arbitration or other proceeding that affects the Mortgaged Premises, or (c) notice from any government or governmental agency that the Mortgaged Premises or any operations thereon are not in compliance with any local, state or federal law rule or ordinance, or (d) notice that the Mortgagor or all or part of the Mortgaged Premises is subject to any investigation relating to any toxic or hazardous substance, waste or constituent, the Mortgagor shall give the Mortgagee oral and written notice thereof, describing the same and the steps that will be taken by the Mortgagor with respect thereto.

**1.16. Financial and Operating Statements.** The Mortgagor shall keep and maintain, at all times, full, true, and accurate books of accounts, in sufficient detail to show the names of the tenants, if any, occupying the Mortgaged Premises, the rent paid by each such tenant and security deposits, if any, copies of all leases, if any, and such other books and records showing in detail the earnings and expenses of the Mortgaged Premises, all of which should adequately reflect the results of the operation of the Mortgaged Premises. All such records relating thereto shall be open to inspection and copying by the Mortgagee or its representatives at any time and from time to time upon request by the Mortgagee, at the Mortgaged Premises or at such other place in the city and county in which the Mortgaged Premises are located. The Mortgagor shall furnish to the Mortgagee within sixty (60) days after the end of the second and fourth quarter of each fiscal year of Mortgagor: (a) current financial and operating statements of the Mortgagor, any guarantors, and the Mortgaged Premises for such fiscal year, including a balance sheet and a profit and loss statement, all in reasonable detail and conforming to generally accepted accounting principles, and (b) a balance sheet and statement of income, expenses and retained earnings, all in reasonable detail, prepared by an independent public accountant in accordance with generally accepted accounting principles, showing the results of the operation of the Mortgaged Premises for such fiscal year. Such financial statements shall be prepared and certified in a manner that is satisfactory to the Mortgagee, at the expense of the Mortgagor. If the Mortgagor is a corporation, partnership, limited liability company, or other legal entity, the Mortgagor shall further supply annual statements to the Mortgagee setting forth the legal, equitable, and beneficial owners of the shares, partnership interests, or other interests in the legal entity. This statement shall show all encumbrances and assignments of such interests and shall contain such other information as the Mortgagee may require in order to determine the ownership and control of the Mortgagor. Throughout the term of this Mortgage, the Mortgagor shall deliver to the Mortgagee such other information with respect to the Mortgagor or the Mortgaged Premises as the Mortgagee may reasonably request from time to time. In the event the Mortgagor fails to furnish any such reports and statements, the Mortgagee may cause an audit to be made of the respective books and records at the sole cost and expense of the Mortgagor.

**1.17. Mortgagee's Right of Entry.** The Mortgagor shall permit the Mortgagee or its authorized representatives to enter the Mortgaged Premises at all times for the purpose of inspecting the same; provided, however, the Mortgagee shall have no duty to make such inspections and shall not incur any liability or obligation for making or not making any such inspections.

**1.18. Due on Sale.** The Mortgagor shall not voluntarily or involuntarily sell, convey, transfer, further mortgage, encumber, or dispose of the Mortgaged Premises, or any part thereof, or any interest therein, legal or equitable, or agree to do so, without first obtaining the written consent of the Mortgagee. The Mortgagee's consent to any one transaction shall not be deemed to be a waiver of the requirement to receive the Mortgagee's consent to future or successive transactions. If the Mortgagor is a corporation, partnership, limited liability company or other entity, the legal, beneficial or equitable ownership of such entity shall not be changed by sale, conveyance, transfer, assignment or encumbrance.

**1.19. Mortgagee's Right to Cure.** Subject to the Mortgagor's rights under Section 1.9 hereof, if the Mortgagor shall fail to comply with any of the covenants or obligations of this

Mortgage, then the Mortgagee may, but shall not be obligated to, without further demand upon or notice to the Mortgagor, and without waiving or releasing the Mortgagor from any obligation contained in this Mortgage, perform such covenants and agreements, investigate and defend against such action or proceeding, and take such other action as the Mortgagee deems necessary to protect its interest in the Mortgaged Premises or this Mortgage. The Mortgagor agrees to repay upon demand all sums incurred by the Mortgagee in remedying any such failure, together with interest at the rate as specified in the Note. All such sums, together with interest as aforesaid, shall become so much additional Secured Indebtedness, but no such advance shall be deemed to relieve the Mortgagor from any failure hereunder.

**1.20. Uniform Commercial Code Security Interest.** This Mortgage shall constitute a security agreement as defined in the Uniform Commercial Code and SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING which is to be filed in the real estate records of the County where the Mortgaged Premises are situated. The name of the record owner of said real estate is the Mortgagor set forth on page one of this Mortgage. Information concerning the security interest created by this Mortgage may be obtained from the Mortgagee, as secured party, at its address as set forth on page one of this Mortgage. The name, social security number or internal revenue service taxpayer identification number, and address of the Mortgagor, as debtor, and the name and address of the Mortgagee, as secured party, are as set forth on page one of this Mortgage. This Mortgage covers goods which are, or are to become, fixtures. This Mortgage is sufficient as a financing statement, and as a financing statement it covers goods which are, or are to become, fixtures on the Land. In addition, the Mortgagor shall execute and deliver to the Mortgagee, upon the Mortgagee's request, any financing statements or amendments thereto or continuation statements thereto that the Mortgagee may require to perfect a security interest in said items or types of property. The Mortgagor shall pay all costs of filing such instruments.

**1.21. Leases.** The Mortgagor shall, at its own cost and expense, perform, comply with and discharge all of the obligations of the Mortgagor under all leases and agreements for the use of the Mortgaged Premises and use its best efforts to enforce or secure the performance of each obligation and undertaking of the respective tenants under such leases and shall appear in and defend, at its own cost and expense, any action or proceeding arising out of or in any manner connected with the Mortgagor's interest in any leases of the Mortgaged Premises. The Mortgagor shall apply all tenants security deposits as required by Minnesota Statutes Section 504.20 and shall keep the covenants required of a lessor or licensor pursuant to Minnesota Statutes Section 504.18, subdivision 1, if the Mortgaged Premises is used for residential purposes. The Mortgagor shall permit no surrender nor assignment of any tenant's interest under said leases unless the right to assign or surrender is expressly reserved under the lease, nor receive any installment of rent for more than one (1) month in advance of its due date, nor execute any mortgage or create or permit a lien which may be or become superior to any such leases, nor permit a subordination of any lease to such mortgage or lien. The Mortgagor shall not modify or amend the terms of any such leases, nor borrow against or pledge the rentals from such leases, nor exercise or waive any default of the tenant thereunder without the prior consent of the Mortgagee. The Mortgagor agrees to obtain the Mortgagee's prior written approval before entering into any lease with a term of five (5) years or more. Should the Mortgagor fail to perform, comply with or discharge any obligations of the Mortgagor under any lease or should

the Mortgagee become aware of or be notified by any tenant under any lease of a failure on the part of the Mortgagor to so perform, comply with or discharge its obligations under said lease, the Mortgagee may, but shall not be obligated to, and without further demand upon or notice to the Mortgagor, and without waiving or releasing the Mortgagor from any obligation in this Mortgage contained, remedy such failure, and the Mortgagor agrees to repay upon demand all sums incurred by the Mortgagee in remedying any such failure together with interest at the rate as specified in the Note. All such sums, together with interest as aforesaid, shall become so much additional Secured Indebtedness, but no such advance shall be deemed to relieve the Mortgagor from any default hereunder.

**1.22. No Consent.** Nothing contained in this Mortgage shall constitute any consent or request by the Mortgagee, express or implied, for the performance of any labor or services or for the furnishing of any materials or other property in respect of the Mortgaged Premises or any part thereof, nor as giving the Mortgagor or any party in interest with the Mortgagor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would create any personal liability against the Mortgagee in respect thereof, or would permit the making of any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Mortgage.

**1.23. Further Assurances.** The Mortgagor shall execute and deliver to the Mortgagee from time to time, on demand, such further instruments, security agreements, financing statements under the Uniform Commercial Code and assurances and do such further acts as Mortgagee may require to carry out more effectively the purposes of this Mortgage and without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the granting clause hereof, or so intended to be. The Mortgagor shall pay any recording fees, filing fees, mortgage registry taxes, stamp taxes and other charges arising out of or incident to the filing or recording of this Mortgage and all documents collateral there, such further assurances and instruments and the issuance and delivery of the Note.

**1.24. Miscellaneous Rights of Mortgagee.** Without affecting the liability of any party liable for payment of the Secured Indebtedness or the performance of any obligation contained herein, and without affecting the rights of the Mortgagee with respect to any security not expressly released in writing, the Mortgagee may, at any time, and without notice to or the consent of the Mortgagor or any party with an interest in the Mortgaged Premises or the Note (a) release any person or entity liable for payment of all or any part of the Secured Indebtedness or for the performance of any obligation herein, (b) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Secured Indebtedness or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof, (c) accept any additional security, (d) release or otherwise deal with any property, real or personal, including any or all of the Mortgaged Premises, including making partial releases of the Mortgaged Premises, or (e) resort to any security agreements, pledges, contracts of guaranty, assignments of rents and leases or other securities; and exhaust any one or more of said securities and the security hereunder, either concurrently or independently and in such order as it may determine. No act or thing, except full

payment of the Secured Indebtedness, which but for this provision could act as a release, termination, satisfaction or impairment of this Mortgage shall in any way release, terminate, satisfy or impair this Mortgage.

## ARTICLE II

### Defaults and Remedies

2.1. **Events of Default.** The occurrence of any one or more of the following events shall constitute an Event of Default under this Mortgage:

- a. The Mortgagor shall fail to pay any amount on the Note when due or shall fail to pay when due any subsequent loan or advance made by the Mortgagee hereunder or the interest thereon, and such failure shall continue for a period of five (5) days or more.
- b. The Mortgagor shall fail to pay any other Secured Indebtedness when due, and such failure shall continue for a period of five (5) days or more.
- c. The Mortgagor shall fail duly to perform or observe any covenant or agreement in the Note, this Mortgage, the Loan Agreement or any other promissory note, agreement, instrument or writing contemplated by or made or delivered pursuant to or in connection with the Note or this Mortgage. If any failure is curable and if Mortgagor has not been given a notice of a similar breach within the preceding twelve (12) months, it may be cured (and no Event of Default will have occurred) if Mortgagor, after receiving written notice from Mortgagee demanding cure of such failure: (i) cures the failure within thirty (30) days; or (ii) if the cure requires more than thirty (30) days, immediately initiates steps sufficient to cure the failure and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.
- d. Any statement, representation or warranty made by the Mortgagor at any time shall prove to have been incorrect or misleading in any material respect when made and the Mortgagor does not correct such incorrect or misleading statement, representation or warranty within thirty (30) days of receipt of notice in writing.
- e. The Mortgagor shall be dissolved or shall make a general assignment for the benefit of creditors or shall initiate or have initiated against it any act, process or proceeding under any insolvency, bankruptcy or similar law.
- f. The Mortgagor shall liquidate, merge, consolidate, transfer a substantial part of its property.

- g. A trustee, receiver or liquidator of the Mortgagor shall be appointed with the consent or acquiescence of the Mortgagor, or any such appointment, if not so consented to or acquiesced in, shall remain unacted or unstayed for an aggregate of thirty (30) days (whether or not consecutive).
- h. Subject to the provisions of Section 1.9 of this Mortgage, execution shall have been levied against the Mortgaged Premises or any lien creditor's suit to enforce a judgment against the Mortgaged Premises shall have been brought and (in either case) shall continue unstayed and in effect for a period of more than ten (10) consecutive calendar days.

**2.2. Remedies.** Upon the occurrence of an Event of Default which remains uncured during the time period provided, or at any time thereafter until such Event of Default is cured to the satisfaction of the Mortgagee, the Mortgagee may, at its option, and without notice to the Mortgagor, exercise any or all of the following rights and remedies, and any other rights and remedies now or then available to it, either hereunder or at law or in equity, including, without limitation, the rights and remedies provided in the Assignment of Rents:

- a. Mortgagee may immediately, and without notice to the Mortgagor, declare the entire unpaid principal balance of the Note together with all other Secured Indebtedness to be immediately due and payable and thereupon all such unpaid principal balance of the Note together with all accrued interest thereon and all other Secured Indebtedness shall be and become immediately due and payable.
- b. The Mortgagee may foreclose this Mortgage by action or advertisement, and the Mortgagor hereby authorizes and fully empowers the Mortgagee to do so, with full authority to sell the Mortgaged Premises at public auction and convey the same to the Purchaser in fee simple all in accordance with and in the manner prescribed by law, and out of the proceeds arising from sale and foreclosure to retain the principal and interest due on the Note and the Secured Indebtedness together with all such sums of money as the Mortgagee shall have expended or advanced pursuant to this Mortgage or pursuant to statute together with interest thereon as herein provided and all costs and expenses of such foreclosure, including lawful attorneys' fees, with the balance, if any, to be paid to the persons entitled thereto by law.
- c. The Mortgagee shall be entitled as a matter of right without notice and without giving bond and without regard to the solvency or insolvency of the Mortgagor, or waste of the Mortgaged Premises or adequacy of the security of the Mortgaged Premises, to apply for the appointment of a receiver in accordance with the statutes and law made and provided for who shall collect the rents, and all other income of any kind; manage the Mortgaged Premises

so to prevent waste; execute leases within or beyond the period of receivership, pay all expenses for normal maintenance of the premises and perform the terms of this Mortgage and apply the rents, issues and profits in the following order to (i) payment of the reasonable fees of said receiver, (ii) application of tenant security deposits as required by Minnesota Statutes Section 504.20, (iii) payment when due of prior or current real estate taxes or special assessments with respect to the Mortgaged Premises or if required by this Mortgage, payment of the periodic escrow for payment of the taxes or special assessments, (iv) the payment when due of premiums for insurance of the type required by this mortgage or if required by this Mortgage, payment of the periodic escrow for the payment of the premiums, (v) keeping of the covenants required of a lessor or licensor pursuant to Minnesota Statutes Section 504.18, and (vi) as further provided in any Assignment of Rents executed by the Mortgagor as further security for the Secured Indebtedness (whether included in this Mortgage or separate instrument), including but not limited to applying the same to the costs and expenses of the receivership, including reasonable attorneys' fees, to the repayment of the Secured Indebtedness and to the operation, maintenance, upkeep and repair of the Mortgaged Premises, including payment of taxes on the Mortgaged Premises and payments of premiums of insurance on the Mortgaged Premises. The Mortgagor does hereby irrevocably consent to such appointment. Nothing contained in this Mortgage and no actions taken pursuant to this Mortgage shall be construed as constituting the Mortgagee a mortgagee in possession.

- d. In addition to the rights available to a mortgagee of real property, the Mortgagee shall also have all the rights, remedies and recourse available to a secured party under the Uniform Commercial Code, including without limitation the right to proceed under the provisions of the Uniform Commercial Code governing default as to any personal property which may be included in the Mortgaged Premises or which may be deemed nonrealty in a foreclosure of this Mortgage or to proceed as to such personal property in accordance with the procedures and remedies available pursuant to a foreclosure of real estate.

### **ARTICLE III**

#### **Miscellaneous**

**3.1. Mortgagor's Acknowledgment of Remedies.** THE MORTGAGOR HEREBY CONSENTS AND AGREES TO THE FORECLOSURE AND SALE OF THE MORTGAGED PREMISES BY ACTION PURSUANT TO MINNESOTA STATUTES CHAPTER 581 OR, AT THE OPTION OF THE MORTGAGEE, BY ADVERTISEMENT PURSUANT TO MINNESOTA STATUTES CHAPTER 580 (OR PURSUANT TO ANY SIMILAR OR REPLACEMENT STATUTES HEREAFTER ENACTED), WHICH PROVIDES FOR SALE AFTER SERVICE OF

NOTICE THEREOF UPON THE OCCUPANT OF THE MORTGAGED PREMISES AND PUBLICATION OF SAID NOTICE FOR SIX (6) WEEKS IN THE COUNTY IN MINNESOTA WHERE THE MORTGAGED PREMISES ARE SITUATED; ACKNOWLEDGES THAT SERVICE NEED NOT BE MADE UPON THE MORTGAGOR PERSONALLY (UNLESS THE MORTGAGOR IS AN OCCUPANT) AND THAT NO HEARING OF ANY TYPE IS REQUIRED IN CONNECTION WITH THE SALE; AND EXCEPT AS MAY BE PROVIDED IN SAID STATUTES EXPRESSLY WAIVES ANY AND ALL RIGHT TO PRIOR NOTICE OF SALE OF THE MORTGAGED PREMISES AND ANY AND ALL RIGHTS TO A PRIOR HEARING OF ANY TYPE IN CONNECTION WITH THE SALE OF THE MORTGAGED PREMISES. The Mortgagor further understands that in the event of such default the Mortgagee may also elect its rights under the Uniform Commercial Code and take possession of the Personal Property (as defined in this Mortgage) and dispose of the same by sale or otherwise in one or more parcels provided that at least ten (10) days' prior notice of such disposition must be given, all as provided for by the Uniform Commercial Code, as hereafter amended or by any similar or replacement statute hereafter enacted. THE MORTGAGOR ACKNOWLEDGES THAT IT IS REPRESENTED BY LEGAL COUNSEL; THAT BEFORE SIGNING THIS DOCUMENT THIS PARAGRAPH AND THE MORTGAGOR'S RIGHTS WERE FULLY EXPLAINED BY SUCH COUNSEL AND THAT THE MORTGAGOR UNDERSTANDS THE NATURE AND EXTENT OF THE RIGHTS WAIVED HEREBY AND THE EFFECT OF SUCH WAIVER.

**3.2. Continued Priority.** Any agreement hereafter made by the Mortgagor and the Mortgagee pursuant to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

**3.3. Cumulative Rights.** Each right, power or remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to the Mortgagee, at law or in equity, or under the Uniform Commercial Code or other law, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy. No delay or omission by the Mortgagee in the exercise of any right, power or remedy arising hereunder or arising otherwise shall impair any such right, power or remedy or the right of the Mortgagee to resort thereto at a later date or be construed to be a waiver of any Event of Default under this Mortgage or the Note.

**3.4. Waiver.** The Mortgagor hereby waives to the full extent lawfully allowed the benefit of any homestead, appraisalment, evaluation, stay and extension laws now or hereafter in force. The Mortgagor hereby waives any rights available with respect to marshaling of assets so as to require the separate sales of any portion of the Mortgaged Premises, or as to require the Mortgagee or any other person to exhaust its remedies against a specific portion of the Mortgaged Premises before proceeding against the other and does hereby expressly consent to and authorize the sale of the Mortgaged Premises or any part thereof as a single unit or parcel.

**3.5. Satisfaction of Mortgage.** When all Secured Indebtedness has been paid, this Mortgage and all assignments herein contained shall be void and this Mortgage shall be satisfied and released by the Mortgagee at the cost and expense of the Mortgagor.

**3.6. Governing Law.** This Mortgage is made and executed under the laws of the State of Minnesota and is intended to be governed by the laws of said State.

**3.7. Binding Effect.** This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and its successors and assigns including without limitation each and every from time to time record owner of the Mortgaged Premises and any other person having an interest therein, shall run with the land and shall inure to the benefit of the Mortgagee and its successors and assigns. As used herein the words "successors and assigns" shall also be deemed to include the heirs, representatives, administrators and executors of any natural person who is a party to this Mortgage.

**3.8. Severability and Survival.** The unenforceability or invalidity of any provisions hereof shall not render any other provision, or provisions herein contained unenforceable or invalid. The foreclosure of this Mortgage will not affect or limit any remedy of the Mortgagee on account of any breach by the Mortgagor of the terms of this Mortgage occurring prior to such foreclosure, except to the extent of the amount bid at foreclosure.

**3.9. Captions.** 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.

**3.10. Notices.** Any notice which any party hereto may desire or may be required to give to any other party shall be in writing and the mailing thereof by certified mail to their respective addresses as set forth on page one herein, or to such other places any party hereto may hereafter by notice in writing designate shall constitute service of notice hereunder.

**THE MORTGAGOR REPRESENTS, CERTIFIES, WARRANTS AND AGREES THAT THE MORTGAGOR HAS READ ALL OF THIS MORTGAGE AND UNDERSTANDS ALL OF THE PROVISIONS OF THIS MORTGAGE. THE MORTGAGOR ALSO AGREES THAT THE MORTGAGEE'S COMPLIANCE WITH THE EXPRESS PROVISIONS OF THIS MORTGAGE SHALL CONSTITUTE GOOD FAITH AND SHALL BE CONSIDERED REASONABLE FOR ALL PURPOSES.**

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**EXHIBIT A**  
**LEGAL DESCRIPTION**

Lot 1, Block 1, Rockford Millennium Park Second Addition, according to the plat thereof recorded in the Office of the County Recorder in and for Wright County, Minnesota.

**EXHIBIT B**  
**PERMITTED ENCUMBRANCES**

1. Mortgage lien in favor of Wells Fargo Business Credit, Inc., dated \_\_\_\_\_, 2001, securing a loan in the original principal amount of \$860,000.00.
2. Mortgage lien in favor of Wells Fargo Business Credit, Inc., dated \_\_\_\_\_, 2001, securing a loan in the original principal amount of \$1,075,000.00.
3. Mortgage lien in favor of the Small Business Administration, securing a loan used to repay the above referenced \$860,000.00 loan, in the original principal amount of \$888,000.00.

**VERIFICATION**

I, Nancy Evers, the City Administrator of City of Rockford and authorized agent for the Creditor, Wright County Economic Development Partnership of Wright County, and the Initiative Foundation, state that the factual allegations made in the foregoing Objection to Confirmation of Plan Reorganization are true and correct according to the best of my knowledge, information, and belief.

Dated: September 15, 2004.

  
Nancy Evers, City Administrator of City  
of Rockford and Authorized Agent for  
Wright County Economic Development  
Partnership and Initiative Foundation

**EXHIBIT 3**

**SECURITY AGREEMENT**

Date:

March 32 2001

Debtor:

SHARK INDUSTRIES, LTD.  
5700 Bleck Drive  
Rockford, MN 55373

Secured Party:

ECONOMIC DEVELOPMENT PARTNERSHIP  
OF WRIGHT COUNTY  
P.O. BOX 525  
ROCKFORD, MN 55373

1. **SECURITY INTEREST.** To secure the payment and performance of each and every debt, liability and obligation of every type and description which the Debtor may now or at any time owe to the Secured Party, whether now existing or hereafter arising, direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, independent, joint, several or joint and several (all such debts, liabilities and obligations being herein collectively referred to as the "Obligations"), the Debtor grants the Secured Party a security interest (the "Security Interest") in the following property (the "Collateral"):

All property of the Debtor, including, but not limited to, the following:

All inventory, and all warehouse receipts, bills of lading and other documents of title covering such inventory, whether now owned or hereafter acquired;

All furniture, fixtures, vehicles, and equipment, together with all accessions, accessories, tools, attachments, fitting, increases, parts, repairs, renewals, replacements and substitutions of all or any part thereof, and all warehouse receipts, bills of lading and other documents of title covering such furniture, fixtures, vehicles, and equipment, whether now owned or hereafter acquired;

All accounts, instruments, chattel paper, other rights to payment, and general intangibles, together with all rights, liens, security interests and other interests which the account debtor or obligor obligated to make any such payment or whether now owned or hereafter acquired;

All records, documents and information relating to the foregoing property, in whatever form or medium, including any computer software used to create, maintain, process or use said records, documents or information; and

All products and proceeds of the foregoing property, including without limitation all accounts, instruments, chattel paper, other rights to payment, money, insurance proceeds and general intangibles related to the foregoing property, and all refunds of insurance premiums due or to become due under all insurance policies covering the foregoing property.

**2. REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS.**

The Debtor represents, warrants, covenants and agrees as follows:

- a. The exact legal name of the Debtor is as set forth at the top of the first page of this Agreement. The Debtor is a corporation whose state of incorporation is Illinois. The Debtor shall not change its state of incorporation.
- b. The address of the Debtor's chief executive office is shown at the beginning of this Agreement. The Debtor shall give the Secured Party prior written notice of any change in such address or the Debtor's name. The Debtor has authority to execute and perform this Agreement.
- c. The Debtor hereby authorizes the Secured Party to file a financing statement describing the Collateral in any one or more offices Secured Party elects. The Debtor hereby further authorizes the Secured Party to file a financing statement describing any agricultural liens or other statutory liens held by Secured Party in any one or more offices Secured Party elects.
- d. The Debtor is the owner of the Collateral, or will be the owner of the Collateral hereafter acquired, free of all security interests, liens and encumbrances other than the Security Interest and any other security of the Secured Party, and except for the security interests described on Exhibit A attached hereto. The Debtor shall not permit any security interest, lien or encumbrance, other than the Security Interest and any other security interest of the Secured Party, to attach to any Collateral without the prior written consent of the Secured Party, except for the security interests described on Exhibit A attached hereto. The Debtor shall defend the Collateral against the claims and demands of all persons other than the Secured Party, and shall promptly pay all taxes, assessments and other government charges upon or against the Debtor, any Collateral and the Security Interest. No financing statement covering any Collateral is on file in any public office, except for the security interests described on Exhibit A attached hereto. If any Collateral is or will become a fixture, the Debtor, at the request of the Secured party, shall furnish the Secured Party with a statement or statements executed by all persons who have or claim an interest in the real estate, in form acceptable to the Secured Party, which statement or statements shall provide that such persons consent to the Security Interest.
- e. The Debtor shall not sell or otherwise dispose of any Collateral or any interest therein without the prior written consent of the Secured Party, except that, until the occurrence of any Event of Default or the revocation by the Secured Party of the

Debtor's right to do so, the Debtor may sell or lease any Collateral constituting inventory in the ordinary course of business at prices constituting the fair market value thereof. For purposes of this Agreement, a transfer in partial or total satisfaction of a debt, obligation or liability shall not constitute a sale or lease in the ordinary course of business.

- f. Each account, instrument, chattel paper, other right to payment and general intangible constituting Collateral is, or will be when acquired, the valid, genuine and legally enforceable obligation of the account debtor or other obligor named therein or in the Debtor's records pertaining thereto as being obligated to pay such obligation, subject to no defense, setoff or counterclaim. The Debtor shall not, without the prior written consent of the Secured Party, agree to any material modification or amendment of any such obligation or agree to any subordination or cancellation of any such obligation.
- g. Other than inventory in transit equipment used in the performance of contracts, and motor vehicles in use, all tangible Collateral shall be located at the Debtor's address(es) set forth at the beginning of this Agreement, and no such Collateral shall be located at any other address without the prior written consent of the Secured Party. The Debtor shall provide the Secured Party with the location of all machinery and equipment on a quarterly basis so long as the obligations remained unpaid.
- h. The Debtor shall: (1) keep all tangible Collateral in good condition and repair, normal depreciation excepted; (2) from time to time replace any worn, broken or defective parts thereof; (3) promptly notify the Secured Party of any loss of or material damage to any Collateral or of any adverse change in the prospect of payment of any account, instrument, chattel paper, other right to payment or general intangible constituting Collateral; (4) not permit any Collateral to be used or kept for any unlawful purpose or in violation of any federal, state or local law; (5) keep all tangible Collateral insured in such amounts, against such risks and in such companies as shall be acceptable to the Secured Party, with loss payable clauses in favor of the Secured Party to the extent of its interest in form acceptable to the Secured Party (including without limitation a provision for at least ten (10) days' prior written notice to the Secured Party of any cancellation or modification of such insurance), and deliver policies or certificates of such insurance to the Secured Party; (6) at the Debtor's chief executive office, keep accurate and complete records pertaining to the Collateral and the Debtor's financial condition, business and property, and submit to the Secured Party such periodic reports concerning the Collateral and the Debtor's financial condition, business and property as the Secured Party may from time to time request; (7) at all reasonable times permit the Secured Party and its representatives to examine and inspect any Collateral, and to examine, inspect and copy the Debtor's records pertaining to the Collateral and the Debtor's financial condition, business and property; (8) at the Secured Party's request, promptly execute, endorse and deliver such financing statements and other instruments, documents, chattel paper and

writings and take such other actions deemed by the Secured Party to be necessary or desirable to establish, protect, perfect or enforce the Security Interest and the rights of the Secured Party under this Agreement and applicable law, and pay all costs of filing financing statements and other writings in all public offices where filing is deemed by the Secured Party to be necessary or desirable.

- i. Where the Collateral is in the possession of a third party, Debtor will join with Secured Party in notifying the third party of Secured Party's security interest and shall obtain an acknowledgment from the third party that it is holding the Collateral for the benefit of Secured Party.
- j. Debtor will cooperate with Secured Party in obtaining control with respect to Collateral consisting of deposit accounts, investment property, letter-of-credit rights, and electronic chattel paper. Debtor will not create any chattel paper without placing a legend on the chattel paper acceptable to the Secured Party indicating that Secured Party has a security interest in the chattel paper.
- k. To the extent Debtor uses the proceeds of loan(s) extended by Secured Party to purchase Collateral, Debtor's repayment of said loan(s) shall apply on a "first-in-first-out" basis so that the portion of the loan(s) used to purchase a particular item of Collateral shall be paid in the chronological order the Debtor purchased the Collateral.

3. **COLLECTION RIGHTS.** At any time before or after an Event of Default, the Secured Party may, and at the request of the Secured Party the Debtor shall, promptly notify any account debtor or obligor of any account, instrument, chattel paper, other right to payment or general intangible constituting Collateral that the same has been assigned to the Secured Party and shall direct such account debtor or obligor to make all future payments to the Secured Party.

4. **LIMITED POWER OF ATTORNEY.** If the Debtor at any time fails to perform or observe any agreement herein, the Secured Party, in the name and on behalf of the Debtor or, at its option, in its own name, may perform or observe such agreement and take any action which the Secured Party may deem necessary or desirable to cure or correct such failure. The Debtor irrevocably authorizes Secured Party and grants the Secured Party a limited power of attorney in the name and on behalf of the Debtor or, at its option, in its own name, to collect, receive, receipt for, create, prepare, complete, execute, endorse, deliver, and file any and all financing statements, insurance applications, remittances, instruments, documents, chattel paper, and other writings, to grant an extension to, compromise, settle, waive, notify, amend, adjust, change, and release any obligation of any account debtor, obligor, insurer, or other person pertaining to any Collateral, and take any other action deemed by the Secured Party to be necessary or desirable to establish, perfect, protect, or enforce the Security Interest. All of the Secured Party's advances, charges, costs, and expenses, including without limitation reasonable attorneys' fees, in connection with the Obligations and in the protection and exercise of any rights or remedies hereunder, together with interest thereon

at the highest rate then applicable to any of the Obligations, shall be secured hereunder and shall be paid by the Debtor to the Secured Party on demand.

5. **EVENTS OF DEFAULT.** The occurrence of any of the following events shall constitute an "Event of Default": (a) any default in the payment or performance of any of the Obligations; or (b) any default under the terms of this Agreement or any other note, obligation, agreement, mortgage, or other writing heretofore, herewith or hereafter given to or acquired by the Secured Party to which the Debtor or any maker, endorser, guarantor, or surety of any of the obligations or any other person providing security for any of the Obligations or for any guaranty of any of the Obligations is a party; or (c) the insolvency, death, dissolution, liquidation, merger, or consolidation of the Debtor or any such maker, endorser, guarantor, surety, or other person; or (d) any appointment of a receiver, trustee, or similar officer of any property of the Debtor or any such maker, endorser, guarantor, surety, or other person; or (e) any assignment for the benefit of creditors of the Debtor or any such maker, endorser, guarantor, surety, or other person; or (f) any commencement of any proceeding under any bankruptcy, insolvency, dissolution, liquidation, or similar law by or against the Debtor or any such maker, endorser, guarantor, surety, or other person; or (g) the sale, lease or other disposition (whether in one transaction or in a series of transactions) to one or more persons other than in the ordinary course of business of all or a substantial part of the assets of the Debtor or any such maker, endorser, guarantor, surety, or other person; or (h) the death, dissolution, or liquidation of any partner of the Debtor or any such maker, endorser, guarantor, surety, or other person; or (i) the entry of any judgment against the Debtor or any such maker, endorser, guarantor, surety, or any other person which is not discharged in a manner acceptable to the Secured Party within thirty (30) days after such entry; or (j) the issuance of levy of any writ, warrant, attachment, garnishment, execution, or other process against any property of the Debtor or any such maker, endorser, guarantor, surety, or any other person; or (k) the attachment of any tax lien to any property of the Debtor or any such maker, endorser, guarantor, surety, or other person; or (l) any statement, representation, or warranty made by Debtor or any such maker, endorser, guarantor, surety, or other person (or any representative of the Debtor or any such maker, endorser, guarantor, surety, or other person) to the Secured Party at any time shall be incorrect or misleading in any material respect when made; or (m) there is a material adverse change in the condition (financial or otherwise), business, or property of the Debtor or any such maker, endorser, guarantor, surety, or other person; or (n) the Secured Party shall in good faith believe that the prospect for due and punctual payment or performance of any of the Obligations, this Agreement or any other note, obligation, agreement, or mortgage heretofore, herewith or hereafter given to or acquired by the Secured Party in connection with any of the Obligations is impaired.

6. **REMEDIES.** Upon the occurrence of any Event of Default and at any time thereafter, the Secured Party may exercise any one or more of the following rights and remedies: (a) declare all Obligations to be immediately due and payable, and the same shall thereupon be immediately due and payable, without presentment or other notice or demand, all of which are hereby waived by the Debtor; (b) require the Debtor to assemble all or any part of the Collateral and make it available to the Secured Party at a place to be designated by the Secured Party which is reasonably convenient to both parties; (c) exercise and enforce any and all rights and remedies available upon default under this Agreement, the Uniform Commercial Code, and any other applicable agreements and laws. If

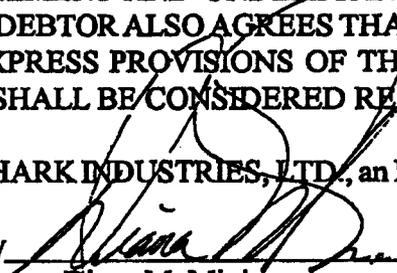
notice to the Debtor of any intended disposition of Collateral or other action is required, such notice shall be deemed reasonably and properly given if mailed by regular or certified mail, postage prepaid, to the Debtor at the address stated at the beginning of this Agreement or at the most recent address shown in the Secured Party's records, at least ten (10) days prior to the action described in such notice. The Debtor consents to the personal jurisdiction of the state and federal courts located in the State of Minnesota in connection with any controversy related to this Agreement, the Collateral, the Security Interest, or any of the Obligations, waives any argument that venue in such forums is not convenient, and agrees that any litigation initiated by the Debtor against the Secured Party in connection with this Agreement, the Collateral, the Security Interest, or any of the Obligations shall be venued in either the District Court of Wright County, Minnesota, or the United States District Court, District of Minnesota.

7. MISCELLANEOUS. A carbon, photographic, or other reproduction of this Agreement is sufficient as a financing statement. This Agreement cannot be waived, modified, amended, abridged, supplemented, terminated, or discharged, and the Security Interest cannot be released or terminated, except by a writing duly executed by the Secured party. A waiver shall be effective only in the specific instance and for the specific purpose given. No delay or failure to act shall preclude the exercise or enforcement of any of the Secured Party's rights or remedies. All rights and remedies of the Secured Party shall be cumulative and may be exercised singularly, concurrently, or successively at the Secured Party's option, and the exercise or enforcement of any one such right or remedy shall not be a condition to or bar the exercise or enforcement of any other. This Agreement shall be binding upon and inure to the benefit of the heirs, legatees, executors, administrators, successors and assigns of Secured Party and shall bind all persons and parties who become bound as a debtor to this Security Agreement. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect, and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement shall survive the execution, delivery, and performance of this Agreement and the creation, payment, and performance of the Obligations. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

THE DEBTOR REPRESENTS, CERTIFIES, WARRANTS, AND AGREES THAT THE DEBTOR HAS READ ALL OF THIS AGREEMENT AND UNDERSTANDS ALL OF THE PROVISIONS OF THIS AGREEMENT. THE DEBTOR ALSO AGREES THAT COMPLIANCE BY THE SECURED PARTY WITH THE EXPRESS PROVISIONS OF THIS AGREEMENT SHALL CONSTITUTE GOOD FAITH AND SHALL BE CONSIDERED REASONABLE FOR ALL PURPOSES.

SHARK INDUSTRIES, LTD., an Illinois corporation

By

  
Diana M. Mini  
Its President

**EXHIBIT A**  
**PERMITTED ENCUMBRANCES**

1. Security interest in favor of Wells Fargo Business Credit, Inc.; however, the Secured Party's security interest in the Debtor's entitlement to tax increment financing ("TIF") payments from the City of Rockford shall be prior and superior to such security interest in favor of Wells Fargo Business Credit, Inc. in accordance with that certain Agreement by and among the Borrower, Wells Fargo Business Credit, Inc. and the Lender.

**STATE OF ILLINOIS UCC-1  
FINANCING STATEMENT**

This statement is presented for filing  
pursuant to the Illinois Uniform Commercial Code

**DEBTOR:**

**SHARK INDUSTRIES, LTD.**  
1639 WEST WALNUT STREET  
CHICAGO IL 60612  
Tax ID. No. 36-3225428

Debtor is an Illinois corporation

**SECURED PARTY:**

**ECONOMIC DEVELOPMENT PARTNERSHIP  
OF WRIGHT COUNTY**

**P.O. BOX 525  
ROCKFORD, MN 55373**

**ASSIGNEE:**

**COLLATERAL:**

All property of the Debtor, including, but not limited to, the following:

All inventory, and all warehouse receipts, bills of lading and other documents of title covering such inventory, whether now owned or hereafter acquired;

All furniture, fixtures, vehicles, and equipment, together with all accessions, accessories, tools, attachments, fitting, increases, parts, repairs, renewals, replacements and substitutions of all or any part thereof, and all warehouse receipts, bills of lading and other documents of title covering such furniture, fixtures, vehicles, and equipment, whether now owned or hereafter acquired;

All accounts, instruments, chattel paper, other rights to payment, and general intangibles, together with all rights, liens, security interests and other interests which the account debtor or obligor obligated to make any such payment or whether now owned or hereafter acquired;

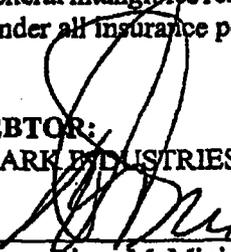
All records, documents and information relating to the foregoing property, in whatever form or medium, including any computer software used to create, maintain, process or use said records, documents or information; and

All products and proceeds of the foregoing property, including without limitation all accounts, instruments, chattel paper, other rights to payment, money, insurance proceeds and general intangibles related to the foregoing property, and all refunds of insurance premiums due or to become due under all insurance policies covering the foregoing property.

**RETURN ACKNOWLEDGMENT COPY TO:**

Hall & Byers, P.A.  
ATTN: Scott T. Larison  
1010 West St. Germain, Suite 600  
St. Cloud, MN 56301

**DEBTOR:**  
SHARK INDUSTRIES, LTD.

By   
Diana M. Mini  
Its President

UCC DIVISION

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STATE OF MINNESOTA  
FINANCING STATEMENT

This statement is presented for filing  
pursuant to Minnesota Statutes 336.9-402.

FOR USE BY FILING  
OFFICER ONLY

23069911

DEBTOR:

SHARK INDUSTRIES, LTD.

6700 Bleck Drive

Rockford, MN 55373

Tax I.D. No. 36-3225428 ✓

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SEC. OF STATE  
MINNESOTA

Debtor is an Illinois corporation

SECURED PARTY:

ECONOMIC DEVELOPMENT PARTNERSHIP  
OF WRIGHT COUNTY

P.O. BOX 525

ROCKFORD, MN 55373

ASSIGNEE:

COLLATERAL:

All property of the Debtor, including, but not limited to, the following:

All inventory, and all warehouse receipts, bills of lading and other documents of title covering such inventory whether now owned or hereafter acquired;

All furniture, fixtures, vehicles, and equipment, together with all accessions, accessories, tools, attachments, fitting increases, parts, repairs, renewals, replacements and substitutions of all or any part thereof, and all warehouse receipts, bills of lading and other documents of title covering such furniture, fixtures, vehicles, and equipment whether now owned or hereafter acquired;

All accounts, instruments, chattel paper, other rights to payment, and general intangibles, together with all rights liens, security interests and other interests which the account debtor or obligor obligated to make any such payment or whether now owned or hereafter acquired;

All records, documents and information relating to the foregoing property, in whatever form or medium, including any computer software used to create, maintain, process or use said records, documents or information; and

All products and proceeds of the foregoing property, including without limitation all accounts, instruments, chattel paper, other rights to payment, money, insurance proceeds and general intangibles related to the foregoing property and all refunds of insurance premiums due or to become due under all insurance policies covering the foregoing property.

RETURN ACKNOWLEDGMENT COPY TO:

Hall & Byers, P.A.

ATTN: Scott T. Larison

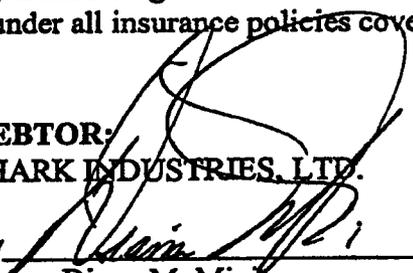
1010 West St. Germain, Suite 600

St. Cloud, MN 56301

DEBTOR:

SHARK INDUSTRIES, LTD.

By

  
Diana M. Mini

Its President

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re: ) Bky Case No. 03-37759  
)  
Shark Industries, Ltd., ) Chapter 11 Case  
Debtor. )

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**UNSWORN CERTIFICATE OF SERVICE**

I, **CHERYL MOLINE**, declare under penalty of perjury that on September 16, 2004, I caused to be served the Objection to Confirmation of Plan Reorganization upon all parties on the attached service list, by depositing a true and correct copy thereof in the United States Mail, postage prepaid, in Minneapolis, Minnesota.

Executed on: September 16, 2004

Signed: \_\_\_\_\_

  
Cheryl Moline

Employed by Gray, Plant, Mooty,  
Mooty & Bennett, P.A.  
500 IDS Center  
80 South 8<sup>th</sup> Street  
Minneapolis, MN 55402

**Service List**

STEVEN B. NOSEK  
701 4<sup>TH</sup> AVE. S., STE. 300  
MINNEAPOLIS, MN 55415

MATTHEW BURTON  
LEONARD O'BRIEN SPENCER GAYLE & SAYRE  
100 S. 5<sup>TH</sup> ST., STE. 1200  
MINNEAPOLIS, MN 55402-1216

OFFICE OF THE UNITED STATES TRUSTEE  
1015 U.S. COURTHOUSE  
300 SOUTH 4TH STREET  
MINNEAPOLIS, MN 55415

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

BKY CASE No. 03-37759

Shark Industries, Ltd.

Debtor.

ORDER DENYING  
CONFIRMATION OF PLAN REORGANIZATION

This matter came before the Court upon the hearing for confirmation of Debtor's Plan of Reorganization. Appearances were noted on the record. Based upon all of the files and records in this case;

IT IS ORDERED:

That confirmation of the Plan is denied.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Gregory F. Kishel  
Chief United States Bankruptcy Judge