

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 13 CASE**

Christine K. Hanner  
SSN XXX-XX-7704  
Richard F. Hanner  
SSN XXX-XX-9644

**CASE NO. 03-38687 DDO**

Debtor.

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

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

1. Select Portfolio Servicing, Inc. fka Fairbanks Capital Corp. (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on August 4, 2004, at 9:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Dennis D. O'Brien in Courtroom 228A of the above entitled Court located at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than July 30, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than July 26, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on December 31, 2003. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001.

This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1. Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$151,300.00, as evidenced by that certain Promissory Note dated September 14, 1999, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated September 14, 1999, executed by Richard Frank Hanner and Christine Katherine Hanner, husband and wife, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B". The property is located in Scott County, Minnesota and is legally described as follows to-wit:

Lots 31 and 32, Block 2, Costello's Addition to Prior Lake, Scott County.

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

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

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of July 15, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of April, 2004 through July, 2004, inclusive, in the amount of \$1,216.31 each; accruing late charges and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

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

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

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

Dated this 15th day of July, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske

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

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

02/04/04 13:12 FAX

FAIRBANKS CAPITAL CORP.

011

0690298104

NOTE

September 14, 1999

IRVING

CALIFORNIA

(Date)

(City)

(State)

15000 ST. PAUL AVENUE

PEYTON LAKE, MINNESOTA 55372

(Property Address)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 151,300.00 (This amount is called "principal"), plus interest, to the order of the Lender. The Lender is NEW CENTURY MORTGAGE CORPORATION, A CALIFORNIA CORPORATION

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 8.990 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

This is a certified true and correct copy of the original.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on November 1, 1999. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on October 1, 2029, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 18490 VON KARMAN, SUITE 1000

IRVINE, CA 92612

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payments will be in the amount of U.S. \$ 1,216.31

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A prepayment of all of the unpaid principal is known as a "full prepayment." A prepayment of only part of the unpaid principal is known as a "partial prepayment."

If within the first 42 months from the execution of the Security Instrument I make a full prepayment, I will pay a prepayment charge in an amount equal to the lesser of two (2) percent of the unpaid principal balance or 60 days interest on the unpaid principal balance.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceed the permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

MINNESOTA FIXED RATE NOTE - Single Family - Nonperforming

11/95

Page 1 of 8

109(MIN) 00411

VMP MORTGAGE FORMS (004921-729)

11/95

Fairbanks Capital Document System - Form 1091

141091 0000312243 400032204

EXHIBIT

A

02/04/04 13:10 FAX

FAIRBANKS CAPITAL CORP.

003

NEW CENTURY MORTGAGE CORPORATION  
18400 VON KARMAN, SUITE 1000  
IRVINE, CA 92612  
Loan Number: 0000298106

(Space Above This Line For Recording Data)

### MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on **September 14, 1999**  
The mortgagor is  
**RICHARD FRANK HANNER AND CHRISTINE KATHERINE HANNER, HUSBAND AND WIFE**

("Borrower"). This Security Instrument is given to  
**NEW CENTURY MORTGAGE CORPORATION**

which is organized and existing under the laws of CALIFORNIA  
address is **18400 VON KARMAN, SUITE 1000  
IRVINE, CA 92612**

(Lender). Borrower owes Lender the principal sum of  
**One Hundred Fifty-One Thousand, Three Hundred and No/100**  
Dollar (U.S. \$ **151,300.00**).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which  
provides for monthly payments, with the full debt, if not paid earlier, due and payable on  
**October 1, 2028**  
and for interest at the yearly rate of **8.2500**

percent. This Security Instrument secures to Lender: (a) the repayment of  
the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the  
payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security

MINNESOTA Single Family-FRMA/FFLMO UNIFORM INSTRUMENT

Page 1 of 8  
VMP MORTGAGE SYSTEMS - 100021-750  
Form 3024 9/99  
Amended 3/03  
Date *09/14/99* *CH*



**EXHIBIT B**

Fairbanks Capital Document System - February 4, 2004

000208188

Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in **SCOTT** County, **Minnesota**:  
**SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.**

A.P.N.: 2500A 0320,  
which has the address of **16089 ST. PAUL AVENUE**, **PRIOR LAKE** (Site), **Chil.**  
**Minnesota 55372** (Zip Code) ("Property Address")

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

**BORROWER COVENANTS** that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is encumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any circumstances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

**UNIFORM COVENANTS.** Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest, Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day maturity payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which carry a lien priority over this Security Instrument as a lien on the Property; (b) yearly household payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the Federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Sections 2601 et seq. ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentally, or costly (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, arrearsly analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an

FORM 3024 (REV. 10/96)

Page 2 of 6

*Paul C. H.*  
Form 3024 (REV. 10/96)

0880295103

The notice shall further inform Borrower of the right to rescind after acquisition and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, reasonable attorneys' fees.

If Lender invokes the power of sale, Lender shall cause a copy of a notice of sale to be served upon any person in possession of the Property. Lender shall publish a notice of sale, and the Property shall be sold at public auction in the manner prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

22. Release. Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument to Borrower. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under applicable law.

23. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

24. Interest on Advances. The interest rate on advances made by Lender under paragraph 7 shall not exceed the maximum rate allowed by applicable law.

25. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. (Check applicable box(es))

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Adjustable Rate Rider      | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> 1-4 Family Rider       |
| <input type="checkbox"/> Circumvented Payment Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Biweekly Payment Rider |
| <input type="checkbox"/> Balloon Rider              | <input type="checkbox"/> Rate Improvement Rider         | <input type="checkbox"/> Second Home Rider      |
| <input type="checkbox"/> VA Rider                   | <input type="checkbox"/> Other(s) (specify):            |   |

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and to any rider(s) executed by Borrower and recorded with it.

Witness:

*Richard Frank Hansen*

*Christine Katherine Harber*  
CHRISTINE KATHERINE HARBER - Borrower

_____ (Seal) - Borrower	_____ (Seal) - Borrower
_____ (Seal) - Borrower	_____ (Seal) - Borrower
_____ (Seal) - Borrower	_____ (Seal) - Borrower
_____ (Seal) - Borrower	_____ (Seal) - Borrower

Fairbanks Capital Document System - February 4, 2004

0000296188

STATE OF MINNESOTA

Scott

County of:

On this 14 day of September, 1999, before me appeared

Christine Katherine Hauger and Richard Frank Hauger

personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

*Bruce A. Dranger*  
Notary Public  
My Commission Expires: 1-31-2000

This instrument was prepared by: NEW CENTURY MORTGAGE CORPORATION  
18400 VON RANMAN, SUITE 1000 IRVINE, CA 92612



10/27/99 (10/27/99)

Page 2 of 2

*R.F. Ch.*  
Form 0000 9/00

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 13 CASE**

Christine K. Hanner  
SSN XXX-XX-7704  
Richard F. Hanner  
SSN XXX-XX-9644

**CASE NO. 03-38687 DDO**

Debtor.

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

**ARGUMENT**

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

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

1. As of July 15, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of April, 2004 through July, 2004, in the amount of \$1,216.31 each; accruing late charges and attorneys fees and costs of \$700.00.

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

The property is also subject to another mortgage in favor of Real Time Resolutions, Inc. in excess of \$25,000.00.

Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to relief from the

automatic stay. See In re Taylor, 151 B.R. 646 (E.D.N.Y., 1993) and In re Davis, 64 B.R. 358 (Bkrcty. S.D.N.Y., 1986).

### **CONCLUSION**

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected.

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

Dated this 15th day of July, 2004.

### **WILFORD & GESKE**

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

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

CHAPTER 13 CASE

CASE NO. 03-38687 DDO

Christine K. Hanner  
SSN XXX-XX-7704  
Richard F. Hanner  
SSN XXX-XX-9644

AFFIDAVIT OF  
LA'CINDA JONES

Debtor.

La'Cinda Jones, being first duly sworn on oath, deposes and states:

1. That she is the Bankruptcy Specialist of Select Portfolio Servicing, Inc..

2. Select Portfolio Servicing, Inc. fka Fairbanks Capital Corp., is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated September 14, 1999, executed by Richard Frank Hanner and Christine Katherine Hanner, husband and wife. The property is located in Scott County, Minnesota and is legally described as follows, to-wit:

Lots 31 and 32, Block 2, Costello's Addition to Prior Lake, Scott County.

3. That she has reviewed the account records relating to the Hanner's mortgage loan, account no. 4000322018.

4. That as of July 1, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$147,476.44
Interest through July 1, 2004	23,211.04
Attorney's Fees:	700.00
Late Charges:	182.46
Suspense Balance:	(596.97)
<b>TOTAL:</b>	<b>\$170,972.97</b>

5. That the mortgage loan is delinquent for monthly post-petition mortgage payments for the months of April, 2004 through July, 2004 in the amount of \$1,216.31 each.

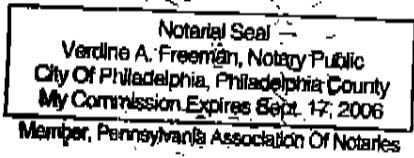
6. This affidavit is given in support of the motion of Select Portfolio Servicing, Inc. fka Fairbanks Capital Corp. for relief from the automatic stay.

SELECT PORTFOLIO SERVICING, INC.

By La'Cinda Jones  
Its Bankruptcy Specialist

Subscribed and sworn to before me  
this 15 day of July, 2004.

Verdine A. Freeman  
Notary Public  
9733\_1



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 13 CASE**

Christine K. Hanner  
SSN XXX-XX-7704  
Richard F. Hanner  
SSN XXX-XX-9644

**CASE NO. 03-38687 DDO**

Debtor.

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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Joanna Cheyka, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Ste 300, Woodbury, Minnesota, declares that on July 15, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of La'Cinda Jones, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Christine K. Hanner  
Richard F. Hanner  
16009 St. Paul Ave SE  
Prior Lake, MN 55372

Jasmine Z. Keller  
12 S 6<sup>th</sup> St Ste 310  
Minneapolis, MN 55402

Robert J. Wendling  
Wendling & Associates  
201 W Burnsville Pkwy Ste 106  
Burnsville, MN 55337

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, MN 55415

Ford Motor Credit Company  
c/o Stewart, Zlimen & Jungers, LTD.  
430 Oak Grove Street, #200  
Minneapolis, MN 55403

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

Dated this 15th day of July, 2004.

/e/ Joanna Cheyka  
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

Christine K. Hanner  
SSN XXX-XX-7704  
Richard F. Hanner  
SSN XXX-XX-9644

**CHAPTER 13 CASE**

**CASE NO. 03-38687 DDO**

Debtor.

**ORDER**

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The above entitled matter came on for hearing upon motion of Select Portfolio Servicing, Inc. fka Fairbanks Capital Corp. (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on August 4, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota. Appearances were as noted in the record. The Chapter 13 Trustee filed her Report of Standing Trustee in response to this motion. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated September 14, 1999, executed by Richard Frank Hanner and Christine Katherine Hanner, husband and wife, covering real estate located in Scott County, Minnesota, legally described as follows, to-wit:

Lots 31 and 32, Block 2, Costello's Addition to Prior Lake, Scott County

and may pursue its remedies under state law in connection with the subject note and mortgage deed. Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: \_\_\_\_\_  
Judge of Bankruptcy Court