

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:
JAMES SCHMIDT

Case No.04-33797

Chapter 7

Debtors.

**NOTICE AND MOTION
MOTION FOR RELIEF FROM**

STAY

To:

JAMES RAPHIEL SCHMIDT
aka
JIM SCHMIDT
125 SUNRISE BLVD
REDWOOD FALLS, MN 56283
SSN: XXX-XX-7693
* Debtor *

THOMAS W VAN HON
PO BOX N
FAIRFAX, MN 55332
507-426-7339

KATHLEEN AMY SCHMIDT
aka
KAY SCHMIDT
125 SUNRISE BLVD
REDWOOD FALLS, MN 56283
SSN: XXX-XX-2276
* Debtor *

THOMAS W VAN HON
(See above)

U S TRUSTEE
US TRUSTEE OFFICE
300 S 4TH ST RM 1015
MINNEAPOLIS, MN 55415
* U S Trustee *

MICHAEL S DIETZ
505 MARQUETTE BLDG
PO BOX 549
ROCHESTER, MN 55903
* Trustee *

U.S. Bank National Association ND, a secured creditor of Debtor(s), by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.

1. The Court will hold a hearing on this motion at 10:30 a.m. on October 6, 2004, before Honorable DENNIS D. O'BRIEN in Courtroom No. 228A, 200 United States Courthouse, 316 N. Robert Street St. Paul, Minnesota 55101, or as soon thereafter as counsel can be heard.

2. Any objection to the relief requested herein must be filed and delivered not later than October 1, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays and holidays), as filed and served by mail not later than September 27, 2004, which is seven (7) days before the time set for the hearing, (excluding Saturdays, Sundays and holidays). UNLESS A WRITTEN RESPONSE IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

3. This motion is filed pursuant to Bankruptcy Rule 4001 and U.S. Bank National Association ND seeks relief from the automatic stay U.S.C. § 362 with respect to certain real property owned by Debtor(s).

4. The petition commencing this Chapter 7 case was filed on June 29, 2004, and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), 11 U.S.C. § 362(d) and applicable rules. This is a core proceeding.

5. By mortgage dated July 17, 2001 in the original principal amount of \$89,000.00, U.S. Bank National Association ND holds a mortgagee's interest in the following real property (the "Property"):

Lot Number Nine (9), of Auditors Subdivision Number One (1) of the Northwest Fractional Quarter (NW FR ¼) of Section Six (6), Township One Hundred Twelve (112), Range Thirty-Five (35) West of the Fifth Principal Meridian, according to the plat thereof filed and of record in Book B of Plats on Page 35. This property lies in the county of Redwood, State of Minnesota.

Address: 125 Sunrise Blvd, Redwood Falls, MN 56283.

The Mortgage filed in the offices of such County. A copy of the Mortgage is attached hereto as Exhibit A.

6. Presently, there is a delinquency under the terms of the note secured by the Mortgage with respect to monthly payments due for the months of April 2004 through September 2004 in a total amount exceeding \$4,170.50, including late charges, plus attorney's fees and costs. The outstanding balance due U.S. Bank National Association ND under the terms of the note is \$87,379.61, plus interest, late fees and attorney's fees.

7. U.S. Bank National Association ND does not have adequate protection of its interest in the Property, which constitutes cause, within the meaning of 11 U.S.C. § 362(d) (1), entitling U.S. Bank National Association ND to relief from the automatic stay. In addition, U.S. Bank National Association ND request that the stay imposed by Rule 4001 (a) (3) of the Federal Rules of Bankruptcy Procedure be held not applicable so that U.S. Bank National Association ND may immediately enforce and implement this Order granting relief from the automatic stay.

8. If testimony is necessary as to any facts relevant to this motion Kenneth J. Johnson will testify on behalf of Client.

9. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, U.S. Bank National Association ND respectfully moves the Court for an order modifying the automatic stay of 11 U.S.C. § 362 and for such other relief as may be just equitable.

Dated: 9/10/04

JOHNSON, BLUMBERG & ASSOCIATES, LLC

By: 

Kenneth J. Johnson #0246074
Attorneys for Movant
39 S. LaSalle Street, Suite 400
Chicago, IL 60603
Phone (312)541-9713

VERIFICATION

I, Sandra Howdysshell, Bankruptcy Specialist of U.S. Bank National Association ND, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: 9/10/04

Signed:


Sandra Howdysshell, Bankruptcy Specialist
U.S. Bank National Association ND

81389279001

10527

Vol. 12, Page:64
Cert. No. 3502, File 110

No. 22460
Registration Tax hereon of \$ 204.70
on this 17th day of September
Redwood County Treasurer
Countersigned, and payment recorded
Shirley F Redmann
County Auditor-Treasurer

Office of Registrar of Titles
County of Redwood, MN
I hereby certify that the within instrument
was filed in this office for the record on the
10 day of Sept.
A.D. 2001 at 8:00 o'clock A. M.
and was duly entered in Torrens Titles
Shirley F Redmann
Registrar of Titles
By JS Deputy
JS Recordings

usbank.
08219855

STATUTORY MORTGAGE MINNESOTA
TORRENS 3502 04625/31/M K09

THIS STATUTORY MORTGAGE (the "Mortgage"), made this 17th day of July, 2001, between
JAMES R. SCHMIDT AND KATHLEEN A. SCHMIDT, HUSBAND AND WIFE

with an address at 125 SUNRISE BLVD, REDWOOD FALLS, MN 56283
(collectively the "Mortgagor"), and U.S. BANK NATIONAL ASSOCIATION ND
having its office at 4325 - 17TH AVENUE SW, FARGO, ND 58103
(the "Mortgagee");

Recording Requested by &
When Recorded Return To:
US Recordings, Inc.
2925 Country Drive Ste 201
St. Paul, MN 55117

WITNESSETH

To secure the payment of Eighty Nine Thousand AND 00/100
Dollars, (\$ 89,000.00) payable on 08/05/31, under the terms of that certain note dated
July 17, 2001 from JAMES SCHMIDT (collectively the "Borrower")

to Mortgagee in the amount of Eighty Nine Thousand AND 00/100
Dollars, (\$ 89,000.00) and all renewals and modifications of that note (the "Note"), together with interest thereon.
If the principal amount secured by this Mortgage is less than the principal amount of the Note, then this Mortgage secures the principal
balance of the Note outstanding at anytime only to the extent that the principal balance does not exceed that lesser amount secured.

The Note secured hereunder is (check one):

- A promissory note, the proceeds of which may not be readvanced following payment; or
- A revolving credit note or agreement under which advances, payments and readvances may be made from time to time, provided that the maximum principal amount which at any one time may be outstanding on the Note and may be secured by the Mortgage is \$ _____. The Mortgagee shall not be obligated to satisfy the Mortgage until all amounts outstanding on the Note have been repaid and the Mortgagor's right, if any, to obtain additional advances under the Note has been permanently terminated.

Mortgage. Mortgagor hereby mortgages to Mortgagee the tract of land lying in the County of REDWOOD
State of Minnesota, legally described as follows, to wit:
SEE ATTACHMENT(S) A FOR LEGAL DESCRIPTION

PROPERTY COMMONLY KNOWN AS: REDWOOD COUNTY 125 SUNRISE BLVD
REDWOOD FALLS, MN 56283

together with all tenements, easements, hereditaments, privileges, minerals and mineral rights, water and water rights, buildings, fixtures and improvements now or hereafter erected or located on the above-described land (hereinafter referred to as the "Mortgaged Premises").

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

- (a) To warrant title to the Mortgaged Premises, subject only to LIENS AND ENCUMBRANCES OF RECORD
- (b) To pay the indebtedness as herein provided, if the Mortgagor is the Borrower.
- (c) To pay all taxes.
- (d) To keep all buildings insured against fire for an amount not less than the full replacement cost but in any event not less than the unpaid amount of the Note secured by this Mortgage and all prior mortgages (if any) and against other hazards for the amounts specified by Mortgagee for the protection of the Mortgagee, including, but not limited to, lightning, hazards under the usual extended coverage endorsement, and all other hazards and risks of direct physical loss occasioned by any cause whatsoever, subject only to the exceptions and exclusions, if any, agreed to by Mortgagee. All such policies shall name Mortgagee as loss payee under the so-called standard mortgagee clause, contain no pro rata reduction provisions and provide for not less than thirty (30) days' notice to Mortgagee of cancellation of said policy.
- (e) That the Mortgaged Premises shall be kept in repair and no waste shall be committed.
- (f) That the whole of the principal sum shall become due after default in the payment of any installment of principal or interest, or of any tax, or in the performance of any any other covenant, at the option of the Mortgagee.

2. Additional Covenants and Agreements of Mortgagor. The Mortgagor makes the following additional covenants and agreements with the Mortgagee:

- (a) Any award of damages under condemnation or payment in lieu thereof for injury to or the taking of all or any part of the Mortgaged Premises are hereby assigned to the Mortgagee with authority to apply the proceeds to the amounts outstanding on the Note. All such proceeds shall be applied first to accrued interest, if any, and then to the principal amount outstanding on the Note, and if the principal amount is payable in installments, said proceeds, after payment of accrued interest, shall be applied to said installments in the inverse order of their maturity.
- (b) Any proceeds of any insurance payable by reason of loss or damage to the Mortgaged Premises are hereby assigned and shall be paid to the Mortgagee with authority to apply the proceeds to the amounts outstanding on the Note. All such proceeds shall be applied first to interest, if any, and then to the principal amount outstanding, and if the principal amount is payable in installments, said proceeds after payment of accrued interest, shall be applied to said installments in the inverse order of their maturity.
- (c) Mortgagor will hold Mortgagee harmless from all costs and expenses in connection with establishing the priority of this Mortgage and if the Mortgagee becomes a party to any mechanics lien suit or other proceeding relating to the Mortgaged Premises or to this Mortgage, the Mortgagor will reimburse the Mortgagee for the Mortgagee's reasonable attorney's fee, costs and expenses in connection with said suit or proceeding.
- (d) Mortgagor will not sell, convey, mortgage, pledge, grant a security interest in, or otherwise transfer or encumber all or any part of the Mortgaged Premises or any interest therein without the prior written consent of the Mortgagee.
- (e) Mortgagor will pay the principal and interest, when due, on prior mortgages and other similar encumbrances, if any.
- (f) Mortgagor will promptly pay when due all charges for utilities or other services to the Mortgaged Premises including, but not limited to, electricity, water, gas, telephone, sanitary sewer and trash and garbage removal supplied and will, upon request of Mortgagee, provide evidence of such payment.
- (g) The insurance carrier providing the insurance described in paragraph 1 (d) above shall be subject to the approval by Mortgagee, which approval shall not be unreasonably withheld.
- (h) Mortgagee or its agent may inspect the Mortgaged Premises at any reasonable time with reasonable notice to the Mortgagor specifying reasonable causes for the inspection.
- (i) Mortgagor agrees upon Mortgagee's request to obtain and deliver at Mortgagor's expense an updated appraisal of the Mortgaged Premises in form and content and by an appraiser acceptable to Mortgagee at any time that either (a) an Event of Default shall have occurred hereunder, or (b) Mortgagee determines in its sole opinion that the security for the loan evidenced by the Note has been materially impaired in any manner, including without limitation by a change in market conditions or a change in the physical condition of the Mortgaged Premises.

3. Payment by Mortgagee. In case of failure by Mortgagor to pay taxes and assessments, prior liens or encumbrances, expenses and attorneys' fees as above specified, or to insure said buildings, improvements, and fixtures and deliver the policies as aforesaid, the Mortgagee may pay such taxes, assessments, prior liens, expenses and attorneys' fees and interest thereon, or obtain such insurance, and the sums so paid shall bear interest from the date of such payment at the same rate set forth in the Note, and shall be impressed as an additional lien upon the Mortgaged Premises and be immediately due and payable from the Mortgagor to the Mortgagee, and this Mortgage shall from date thereof secure the repayment of such advances with interest.

4. Event of Default/Acceleration of Maturity. Mortgagor agrees that at the option of the Mortgagee and in addition to Mortgagee's right to accelerate the maturity of the indebtedness secured hereby as set forth above in the Statutory Covenants, the entire remaining principal balance plus accrued interest shall become due and payable in full upon the occurrence of any of the following (each of which is herein referred to as an "Event of Default"):

- (i) A default by Mortgagor under the terms of the Note; or
- (ii) The default by Mortgagor in the performance of any other terms or covenants contained herein or in the Note or contained in any other agreement between Mortgagor and Mortgagee.

5. Covenants and Agreements of Mortgagee. If, and only if, this Mortgage secures the repayment of a "conventional loan" within the meaning of Minnesota Statutes, Section 47.20, then Mortgagee, in consideration of the execution and delivery of this Mortgage, hereby covenants and agrees:

- (a) To furnish Mortgagor with a conformed copy of this Mortgage and the Note, at a time no later than a reasonable time after recordation of this Mortgage;
- (b) That if Mortgagee intends to foreclose this Mortgage, it will give the Mortgagor written notice of the occurrence of an Event of Default (unless the default shall consist of the Mortgagor selling, conveying, or otherwise transferring all or any part of the Mortgaged Premises without the written consent of the Mortgagee, in which case no notice shall be required) under the terms or conditions of the Note or this Mortgage by sending the notice by certified mail to the address of the Mortgaged Premises, or the address of the Mortgagor indicated above, or such other address as the Mortgagor may subsequently designate to Mortgagee. Such notice shall contain the following provisions:
 - (i) The nature of the default by the Mortgagor;
 - (ii) The action required to cure the default;
 - (iii) A date, not less than 30 days from the date the notice is mailed, by which the default must be cured;
 - (iv) That failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by the Mortgage and sale of the Mortgaged Premises;
 - (v) That the Mortgagor has the right to reinstate this Mortgage after acceleration; and
 - (vi) That the Mortgagor has the right to bring a court action to assert the nonexistence of a default or any other defense of the Mortgagor to acceleration and sale.

6. Statutory Power of Sale, Waiver and Agreement. At maturity, whether at the stated time or prior thereto by the acceleration of maturity pursuant hereto, Mortgagee (in addition to any other remedies provided for herein or which it may have at law or equity) shall have the statutory power of sale, and on foreclosure may retain statutory costs and attorneys' fees.

MORTGAGOR HEREBY: EXPRESSLY CONSENTS TO THE FORECLOSURE AND SALE OF THE MORTGAGED PREMISES BY ACTION PURSUANT TO MINNESOTA STATUTES CHAPTER 581 OR, AT THE OPTION OF MORTGAGEE, BY ADVERTISEMENT PURSUANT TO MINNESOTA STATUTES CHAPTER 580, WHICH PROVIDES FOR SALE AFTER SERVICE OF NOTICE THEREOF UPON THE OCCUPANT OF THE MORTGAGED PREMISES AND PUBLICATION OF SAID NOTICE AS REQUIRED BY LAW IN THE COUNTY IN MINNESOTA WHERE THE MORTGAGED PREMISES IS SITUATED; ACKNOWLEDGES THAT SERVICE NEED NOT BE MADE UPON MORTGAGOR PERSONALLY (UNLESS 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.

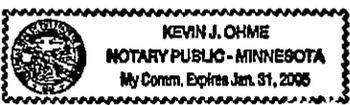
7. Miscellaneous. This Mortgage shall be governed by and construed in accordance with the laws of the State of Minnesota. All covenants and agreements by Mortgagor in this Mortgage shall bind Mortgagor and Mortgagor's heirs, successors and assigns and shall inure to the benefit of Mortgagee and its successors and assigns, whether so expressed or not. Any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the maturity of the indebtedness secured by the Mortgage. In the event any provision hereof is determined to be unenforceable or invalid, such provision or such part thereof as may be unenforceable or invalid shall be deemed severed from this Mortgage and the remaining provisions carried out with the same force and effect as if the severed provisions or part thereof had not been made a part hereof.

MORTGAGOR(S)
James R. Schmidt 7-17-01
JAMES R. SCHMIDT Date
Kathleen A. Schmidt 7-17-01
KATHLEEN A. SCHMIDT Date

Date

STATE OF Minnesota }
COUNTY OF Dixon } SS.

The foregoing instrument was acknowledged before me this 17 day of July 2001
by JAMES R. SCHMIDT AND KATHLEEN A. SCHMIDT, HUSBAND AND WIFE



[Signature]
Notary Public

This instrument was Drafted
U.S. Bank
P.O. Box 2687
Fargo, ND 58108-2687

~~Return recorded document
U.S. Bank
Attn: Lien Perfection Dept.
P.O. Box 2687
Fargo, ND 58108-2687~~

JAMES SCHMIDT
66200113892790001

ATTACHMENT A
Property Description

LOT NUMBER NINE (9), OF AUDITORS SUBDIVISION NUMBER ONE (1)
OF THE NORTHWEST FRACTIONAL QUARTER (NW 1/4) OF SECTION
SIX (6), TOWNSHIP ONE HUNDRED TWELVE (112), RANGE
THIRTY-FIVE (35) WEST OF THE FIFTH PRINCIPAL MERIDIAN,
ACCORDING TO THE PLAT THEREOF FILED AND OF RECORD IN BOOK B
OF PLATS ON PAGE 35.

THIS PROPERTY LIES IN THE COUNTY OF REDWOOD, STATE OF
MINNESOTA.



U08219855-01FB04

MORTGAGE:

L00N# 66200113892790001

US Recordings



CONSUMER INSTALLMENT NOTE

86000

Creditor Name U.S. BANK NATIONAL ASSOCIATION ND
Address 4325 - 17TH AVENUE SW
FARGO, ND 58103

Acct/Bank: 6620011389279001 / 04625
Note Date July 17, 2001

Borrower(s) JAMES SCHMIDT 475-50-7693

THIS IS A CONSUMER CREDIT TRANSACTION

The words "I", "ME" and "MY" refer to each borrower who signs below. The words "YOU" and "YOUR" refer to the Creditor. This is the agreement that governs my loan with you. I understand that each borrower who signs it is legally responsible for repaying the entire loan. Interest on my loan will be simple interest. This means that I'll only be charged for the interest that I owe you each day on the remaining balance of the amount I've borrowed.

PROMISE TO PAY. To repay my loan, I promise to pay you Eighty Nine Thousand AND 00/100 dollars, (\$89,000.00) (the principal) plus interest on the principal at the rate shown below, credit insurance charges disclosed below, if any, and Late Charges and other charges disclosed below. I have a right to rescind my loan, interest will begin accruing on the first day (excluding Saturday, Sunday and federal holidays) after the day my right to rescind ends. I will pay you interest on this loan at an annual rate which is equal to: 7.99% until the loan is paid in full.

Table with 4 columns: ANNUAL PERCENTAGE RATE (8.23%), FINANCE CHARGE (\$148,604.00), Amount Financed (\$86,926.00), Total of Payments (\$235,530.00)

PAYMENT SCHEDULE table with 3 columns: Number of Payments (360), Amount of Payments (\$654.25), When payments are due (MONTHLY beginning 09/05/01)

DEMAND FEATURE: This loan has a demand feature. VARIABLE RATE: (Primary dwelling secured; term > 1 year) My loan has a variable rate feature. SECURITY: I am giving you a security interest in the property being purchased. FILING FEES: \$ 0.00. PREPAYMENT: If I pay off early, I may have to pay a penalty. LATE CHARGE: If a payment (other than the final payment) is more than 5 days late, I must pay you a late charge of 1.5% of the late payment or \$ 15.00.

COLORADO BORROWERS: Balloon Payment Disclosure (Scheduled payment more than twice as large as the average of all other payments). Check if applicable (not applicable if loan is primarily secured by an interest in land used for residential purposes).

You and I agree that each provision on any page of this note for which a box is checked is part of this note.

LATE PAYMENT. I understand I may be charged a fee for late payment as described on the first page of this note except as prohibited by law. I agree that if my payment coupon or statement shows a payment due date that is a Saturday, Sunday, or holiday, I will get my payment to you by 12:00 noon of the previous business day.

PREPAYMENT. If I prepay this loan in full at any time, I agree to pay at least the minimum finance charge referred to above. Also, if this loan is secured by a mortgage or deed of trust, I will pay a \$250 prepayment fee if I prepay this loan in full within 24 months after the Note Date.

CREDIT INSURANCE REFUNDS. If credit insurance is cancelled for any reason, the amount of the premium refund will be calculated as directed by the insurance company. All premium refunds will be applied to the loan if any balance is outstanding. But, applying a premium refund to my loan will not cure any default.

NEGATIVE AMORTIZATION-VARIABLE RATE LOAN. Following an interest rate increase, my regular payment amount could be less than the amount of the interest I owe for the first full payment period following the interest rate change. If so, you have the option of (1) subtracting the amount of my regular payment from the interest I owe and adding the difference to my unpaid principal balance for each payment period that the interest owing exceeds my regular payment amount, which may cause a larger final payment; or (2) increasing the amount of my regular payment to an amount adequate to fully amortize the outstanding principal balance of the loan over the remaining term of my loan. If you decide to change the amount of my payment, you will give me at least 30 days written notification of the effective date of the change and the new payment amount.

ABILITY TO PAY. I will not intentionally do anything or allow anything to happen that materially reduces my ability to pay this note when due. Such events may include, among other things, that I (Nevada and Wisconsin only - my spouse) or any co-maker or guarantor of this note, die, (Nevada and Wisconsin only - change marital status or domicile), or become unemployed or insolvent.

DEFAULT

Unless I live in a state where a provision is excluded in the chart below, I will be in default if any one or more of the following events occur:

Default Provision:	Default Provision:
1. I fail to make a payment within 10 days of the time required by the agreement.	All States but WI.
2. Either (i) the interval between scheduled payments is 2 months or less, and I have outstanding an amount exceeding one full payment which has remained unpaid for more than 10 days after the due date or I fail to pay the first or last payment within 40 days after the due date; or (ii) the interval between scheduled payments is more than 2 months, and I have all or any part of one scheduled payment which has remained unpaid for more than 60 days after its due date; or (iii) there is only one scheduled payment, and I fail to pay all or any part of the payment within 40 days after its due date.	WI only.
3. I fail to observe or perform any covenant of this agreement, if the failure materially impairs the condition, value or protection of, or your rights in any collateral securing this agreement, or materially impairs my ability to pay amounts due under this agreement.	All States.
4. The prospect of payment, performance or realization of collateral is significantly impaired.	All States but IA and WI.
5. I die, I become insolvent or I fail to provide an annual financial statement if requested.	All States but IA, ID, KS and WI.

REMEDIES. If I am in default, you will give me notice of my right to cure the default if required by law. If no notice is required by law, or if I do not cure the default within the time stated in the notice, you may: (a) declare the entire balance of this note immediately due and payable without demand or notice to me; (b) require additional security or other additional parties as guarantors or co-obligors as a condition of waiving any other remedy you may have under law or this note; (c) exercise any legal remedy available to you. I also agree to pay any attorneys' fees, legal expenses, and costs of enforcing this note except as prohibited or limited by law.

I understand that if you choose to pursue one or more of these remedies you are not waiving your right to choose later any other remedy until this note is paid in full. You can delay enforcing your rights under this note without losing them and you'll still be able to recover all amounts I owe you.

RECONVEYANCE FEE. (If note is secured by a deed of trust) I agree to pay a reconveyance document fee of \$ 0.00 when the deed of trust properly is reconveyed from the deed of trust after this note is paid in full. I also agree to pay whatever filing fee a county recorder or other official charges to record the reconveyance documents. The current estimate of that filing fee is \$ 0.00.

TRANSFER OF REAL PROPERTY COLLATERAL. (If note is secured by a mortgage or deed of trust.) I understand that the deed of trust or mortgage that secures my obligations under this note contains a provision that permits you, the Bank, to require me to pay all amounts owing under this note if any part of the Property (collateral) is sold or transferred. In California, the provision reads like this in Paragraph 3f(1): "Beneficiary (the Bank) may, if permitted by law, require Trustor (you) immediately to pay Beneficiary all that is owing under the promissory note or Agreement described in 1 (this Note or Account) if any of the Property, or an interest in the Property, is sold or transferred."

DEPOSIT ACCOUNT SECURITY INTEREST. Unless it is prohibited by law or would make a nontaxable account taxable, I give you a security interest in my Payment Account and in any other deposit account I may at any time have with you or any other bank to secure this note. "Payment Account" means the deposit account referred to in the "Convenient Payments" part of the PROMISE TO PAY section on the first page of this note. If the entire balance of this loan becomes due, you may use such funds on deposit with you to pay this note and, if the deposit account is a time deposit, any early withdrawal penalty that applies. If you take any such funds or place a hold on any such funds to enforce your security interest in my deposit account(s) with you, you will give me any notice and right to cure required by law. If you give me that notice, or if no notice is required by law, I will not have a claim against you for wrongful dishonor of checks written against my account or for any other damages to me arising from your hold on, or taking of, my funds.

OTHER SECURITY. This note is also secured by collateral securing other loans I may have with you, to the extent not prohibited by law. For this note only, you waive any security interest in my principal dwelling you may have in connection with any loan to me other than this note. You also disclaim and will not enforce a security interest in my principal dwelling as security for this note, or any portion of this note, if this note is governed by the Wisconsin Consumer Act and, at the time this note is declared due and payable because of the occurrence of an event of default, the full unpaid balance (including finance charges) is less than \$1,000.

CORRECTING ERRORS. If there are any errors or problems with this Note or related documents that were signed or were supposed to be signed, I agree to cooperate in correcting those errors. For example, I will sign mortgages, deeds of trust, or other documents, or have them signed by others, if you believe that to be necessary or appropriate.

CO-BORROWERS. If I am signing this note as a co-borrower, I agree to be equally responsible with the borrower, and upon default you may sue either or both of us. You are not required to notify me that this note is unpaid. You may extend the terms of this agreement and release any security without notifying or releasing me from responsibility on this note.

WAIVER. To the extent the law permits, I waive certain rights I may have including demand, presentment, protest, notice of dishonor and notice of protest.

IMAGE PROCESSING. Any party may create an optical disk or microfilm image of this note and, as part of their normal business practice, may destroy the original after creating such an image. A reproduction of this note from such an image will for all purposes be the equivalent of the original.

GOVERNING LAW. The validity, construction and enforcement of this note are governed by the internal laws of the State of North Dakota. If I am a resident of a state where the Uniform Consumer Credit Code (UCCC), the Idaho Credit Code (ICC), or the Wisconsin Consumer Act (WCA) applies, no provision of this agreement inconsistent with the UCCC, ICC or WCA shall be valid except for any provisions relating to the charging of interest, finance charges and fees and related matters. If any provision of this note violates the law and is unenforceable, the rest of the note will remain valid. If the terms of this note and any agreement securing this note conflict, the terms of this note will control.

FINAL AGREEMENT. This agreement and any other documents evidencing or securing my loan with you constitute a final expression of our agreement and may not be contradicted by evidence of any alleged oral agreement.

PRIVACY PLEDGE AND INFORMATION SHARING. You will receive our Privacy Pledge when your loan is made. Every year we will send you another copy. You may get a copy at our bank offices, or find it at usbank.com. Our Privacy Pledge tells how we collect, protect and use your confidential information. It also tells when we may share that information with members of our corporate family or unrelated businesses. The Privacy Pledge also tells you how you can limit the ways we share your information. It also tells you how to request that we correct that information.

CREDIT BUREAU DISPUTES. If I believe you have inaccurately reported information on my credit history to a credit bureau, I will call 1-800-481-9057 or write U.S. Bank, Consumer Recovery Department, Attn.: CBR Disputes, P.O. Box 17143, Denver, CO 80217.

Variable Rate Disclosures - Wisconsin Borrowers Only

Variable Rate. If a variable rate based on an Index Rate is selected, this note permits you to increase or decrease the rate of interest from time to time. The following disclosures apply if this note is secured by a first lien real estate mortgage or equivalent security interest on a one-to-four family dwelling used as my principal place of residence. But they do not apply if the loan proceeds were used to finance or refinance the purchase of the dwelling.

Index. An increase in the Index Rate will cause a corresponding increase in the interest rate I pay.

Right to Prepay. I may prepay this note in whole or in part at any time without penalty.

Notice. Notice of any increase in the interest rate must be given to me by you.

CREDIT INSURANCE. I understand I don't have to purchase credit life insurance or disability insurance to qualify for this loan. But if I'm in good health and under 66 years of age, I may apply for insurance at the premium shown below. I want:

<input type="checkbox"/> Single Credit Life \$ _____	Date _____	Signature _____	Birthdate _____
<input type="checkbox"/> Joint Credit Life \$ _____	Date _____	Signature _____	Birthdate _____
<input type="checkbox"/> Credit Disability \$ _____	Date _____	One Borrower Only	Birthdate _____

I do not want credit insurance. 1st Borrower's initials _____ 2nd Borrower's initials _____

Property insurance: Property insurance is is not required to obtain this loan. If required I can obtain insurance from anyone I want that is acceptable to you.

Bank Use Only

BRANCH 04625

ACCT 66200113892790001

DIV/OFF /M K09

UNLESS THE LAW PROVIDES OTHERWISE, THIS PROMISSORY NOTE MAY BE THE BASIS FOR A PERSONAL ACTION AGAINST ME IN ADDITION TO OTHER REMEDIES ALLOWED BY LAW.

NOTICE: THE MOTOR VEHICLE IN THIS TRANSACTION, IF ANY, MAY BE SUBJECT TO REPOSSESSION. IF IT IS REPOSSESSED AND SOLD TO SOMEONE ELSE, AND ALL AMOUNTS DUE TO THE CREDITOR ARE NOT RECEIVED IN THAT SALE, I MAY HAVE TO PAY THE DIFFERENCE.

NOTICE TO CUSTOMER (a) I SHOULD NOT SIGN THIS BEFORE I READ THE WRITING ON ALL PAGES, EVEN IF OTHERWISE ADVISED.
 (b) I SHOULD NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.
 (c) I, THE BORROWER, AM ENTITLED TO AN EXACT COPY OF ANY AGREEMENT I SIGN.
 (d) I HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT AND I MAY BE ENTITLED TO A PARTIAL REFUND OF THE FINANCE CHARGE OR I MAY HAVE TO PAY A MINIMUM FINANCE CHARGE OR PREPAYMENT FEE.

Signature: *James A. Schmidt* Date: 07/17/01 Address: 125 SUNRISE BV, REDWOOD FALLS, MN 562831852

Signature: *Stephanie A. Schmidt* Date: _____ Address: _____

For California, Idaho, Nevada, Washington and Wisconsin residents only:
 I am married unmarried legally separated. If I am a married Wisconsin resident and my spouse is not signing above, the name of my spouse is _____
 and my spouse resides at the address shown above _____
 The obligations to you evidenced by this note are being incurred in the interest of my marriage or family and are for a community benefit.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:
JAMES SCHMIDT

Case No.04-33797

Chapter 7

Debtors.

**MEMORANDUM
MOTION FOR RELIEF FROM STAY**

U.S. Bank National Association ND submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

U.S. Bank National Association ND holds a valid, duly perfected mortgage on real property owned by Debtor(s). Presently, there is a delinquency under the terms of the note secured by the Mortgage with respect to monthly payments due for the months of April 2004 through September 2004 in a total amount exceeding \$4,170.50, including late charges, plus attorney's fees and costs. The outstanding balance due U.S. Bank National Association ND under the terms of the note is \$87,379.61, plus interest, late fees and attorney's fees.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such (creditor)." 11 U.S.C. § 362(d)(1). The Bankruptcy Code states that adequate protection may be provided by requiring cash payments from the trustee to the entity seeking relief, by providing the entity seeking

relief a replacement lien, or granting the entity seeking relief the indubitable equivalent of their interest. § 361. Here, Debtor(s) failed to make the payments required by the note and mortgage for the months of April 2004 through September 2004 for post-petition payments. Because the validity of the mortgage has not been challenged, the default by the debtor has not been disputed, and the trustee has not opposed lifting the automatic stay, the default alone entitles U.S. Bank National Association ND to relief from the automatic stay. *See in re Elikor*, 100 B.R. 180, 183 (Bkrtcy.M.D.Pa. 1989).

Furthermore, there has been no attempt by Debtor(s) to otherwise provide U.S. Bank National Association ND with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362(d)(1), justifying relief from the stay.

Accordingly, U.S. Bank National Association ND is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property. In addition, U.S. Bank National Association ND requests that the stay imposed by Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure be held not applicable so that Client may immediately enforce and implement this Order granting relief from the automatic stay.

Dated: 9/10/04

JOHNSON, BLUMBERG & ASSOCIATES, LLC

By: ___/s/ Kenneth J. Johnson

Kenneth J. Johnson #0246074
Attorneys for Movant
39 S. LaSalle Street, Suite 400
Chicago, IL 60603
Phone (312)541-9713

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:
JAMES SCHMIDT

Case No.04-33797

Chapter 7

Debtors.

CERTIFICATE OF SERVICE

To:

JAMES RAPHAEL SCHMIDT
aka
JIM SCHMIDT
125 SUNRISE BLVD
REDWOOD FALLS, MN 56283
SSN: XXX-XX-7693
* Debtor *

THOMAS W VAN HON
PO BOX N
FAIRFAX, MN 55332
507-426-7339

KATHLEEN AMY SCHMIDT
aka
KAY SCHMIDT
125 SUNRISE BLVD
REDWOOD FALLS, MN 56283
SSN: XXX-XX-2276
* Debtor *

THOMAS W VAN HON
(See above)

U S TRUSTEE
US TRUSTEE OFFICE
300 S 4TH ST RM 1015
MINNEAPOLIS, MN 55415
* U S Trustee *

MICHAEL S DIETZ
505 MARQUETTE BLDG
PO BOX 549
ROCHESTER, MN 55903
* Trustee *

I, KENNETH J. JOHNSON, an attorney, certify that I served this notice by mailing a copy to the above named parties at the addresses listed above by depositing the same in the U.S. mail at 39 S. LaSalle St., Chicago, Illinois at 5:00 p.m., on September 10, 2004.

/s/ Kenneth J. Johnson
Attorney For Movant

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:
JAMES SCHMIDT

Case No.04-33797

Chapter 7

Debtors.

**ORDER GRANTING
RELIEF FROM STAY**

This cause coming to be heard on the Motion of U.S. BANK NATIONAL ASSOCIATION ND, through its attorneys, Johnson, Blumberg & Associates, LLC, for relief from the automatic stay, the Court being fully advised:

IT IS HEREBY ORDERED:

- A. That the Automatic Stay of the above case is hereby modified to allow U.S. BANK NATIONAL ASSOCIATION ND to proceed with foreclosure, eviction or any other action to preserve and enforce its rights with regard to the property commonly known as 1616 5th Street East, Saint Paul, MN 55106;
- B. That the 10 day stay provision of Bankruptcy rule of Procedure 4001(a)(3) is waived.

DATE: _____

ENTERED:

Judge Dennis D. O'Brien

Kenneth J. Johnson #0246074
Johnson, Blumberg & Associates, LLC
Attorneys at Law
39 South LaSalle Street, Suite 400
Chicago, Illinois 60603
312-541-9710