

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Kathleen Georgia Wehmhoff
Debtor.

Case Number 04-33997-GFK

Chapter 13 Case

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM THE AUTOMATIC STAY

TO: Kathleen G. Wehmhoff, 14388 Pennock Avenue South, Apple Valley, MN 55124; Becky A. Moshier, Attorney at Law, Suite 420, 2233 University Avenue West, St. Paul, MN 55114; Jasmine Z. Keller, Chapter 13 Trustee, Suite 310, 12 South Sixth Street, Minneapolis, MN 55402; U.S. Trustee, 1015 U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415.

1. City-County Federal Credit Union ("City-County"), by the undersigned, moves the Court for relief requested below and gives notice of hearing.

2. The Court will hold a hearing on the below motion at 10:30 in the morning on September 27, 2004, at Courtroom 228B, United States Bankruptcy Court, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101, or as soon thereafter as counsel can be heard.

3. Any response to this motion must be delivered and filed not later than September 22, 2004, which is three days before the time set for the hearing (exclusive of Saturdays, Sundays, and legal holidays), or served and filed by mail not later than September 16, 2004, which is seven days before the time set for the hearing (exclusive of Saturdays, Sundays, and legal holidays).

4. Pursuant to Local Bankruptcy Rule 9013-2(a), you are notified that UNLESS A

RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

5. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(G). This motion is filed under Bankruptcy Rules 4001, 9013, and 9014 and under Local Bankruptcy Rule 9013-2. This motion arises under 11 U.S.C. § 362.

6. The debtor commenced this Chapter 13 case on July 8, 2004. The case is now pending in this Court.

7. City-County moves for relief from the stay based upon the facts and reasons set forth below.

FACTS

8. City-County has a claim against the debtor in the amount of \$19,339.09 as of September 13, 2004, on account number 813552-29, pursuant to a note and disclosure statement dated August 23, 2002, a copy of which is attached hereto as Exhibit 1.

9. City-County account number 813552-29 is secured by real property described as Lot 9, Block 1, Pennock Shores, Dakota County, Minnesota; ("the subject real estate"), by the terms of a mortgage dated August 23, 2002, filed January 11, 2003, as document number 486443, in the office of the Dakota County Registrar of Titles, a copy of which is attached hereto as Exhibit 2.

10. The subject real estate is scheduled by the debtor as having a value of \$160,500.00; the subject real estate has a 2004 estimated market value for taxes payable in 2005 of \$160,500.00.

11. The subject real estate is subject to a first mortgage in favor of Wells Fargo Mortgage with a balance of \$132,667.00 as of the date of filing according to the schedules of the debtor.

12. The debtor agreed to pay City-County Federal Credit Union regular monthly payments under the terms of its notes and mortgages.

13. The debtor's Chapter 13 Plan states at paragraph 5 that the debtor will maintain the regular payments which come due after the date the petition was filed.

14. The debtor has failed to pay the monthly payments to City-County on the account secured by the real estate due on April 25, 2004, and thereafter; following the filing of this bankruptcy case the debtor is owing for two post-petition payments on the above account in the amounts of \$216.00; the current default on post-petition is \$432.00; an additional installment is due on September 25, 2004.

15. The debtor has failed to protect the interest of City-County Federal Credit Union in the subject property and has not offered or provided adequate protection for City-County's interest in the subject property.

16. Under Minnesota law, City-County may not be able to obtain possession for at least nine months after it is able to commence foreclosure proceedings, during which time the amounts due under the first mortgage for interest and holding expenses, plus amounts due under the second mortgage for interest and holding expenses, plus real estate taxes, plus insurance, plus costs of foreclosure on the multiple mortgages, will reduce any equity cushion existing as of the date of the commencement of the Chapter 13 Case herein.

17. Under the terms of its note and mortgage, City-County Federal Credit Union is

entitled to foreclose its mortgage.

18. That if testimony is required at a hearing on the motion, Jack Flatley, Patty Brache, or Terri Nagle of City-County Federal Credit Union may testify on behalf of the moving party regarding the facts set forth herein.

WHEREFORE, City-County Federal Credit Union moves the Court for an order as follows:

1. Immediately modifying the automatic stay of 11 U.S.C. § 362(a) as to City-County Federal Credit Union to allow it to pursue its remedies regarding the real property in which it asserts an interest, namely, Lot 9, Block 1, Pennock Shores, Dakota County, Minnesota.
2. Granting such other and further relief as the Court may deem just and proper.

Dated: September 14, 2004.

/e/ Lee W. Mosher
Lee W. Mosher
Attorney License Number 7570X
Davern McLeod & Mosher LLP
Suite 150
7500 Olson Memorial Highway
Golden Valley, Minnesota 55427
Telephone 763-545-5600
Attorney for City-County Federal Credit Union

NOTICE REGARDING DEBT OR LIEN.

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.

1. The amount of the debt or lien:

Account 813552-29

as of September 13, 2004, City-County Federal Credit Union has a claim on account 813552-29 in the amount of \$19,339.09, plus interest in the amount of \$3.59 per day thereafter. As of September 13, 2004, the account is delinquent in the amount of \$1,080.00.

2. The name of the creditor to whom the debt/lien is owed: City-County Federal Credit Union.
3. Unless you, within 30 days after receipt of this notice, dispute the validity of the debt/lien, or any portion thereof, the debt/lien will be assumed to be valid by the undersigned.
4. If you notify the undersigned in writing within the 30 day period that the debt/lien, or any portion thereof, is disputed, the undersigned will obtain verification of the debt/lien or a copy of a judgment against you and a copy of such verification or judgment will be mailed to you by the undersigned.
5. Upon your written request within the 30 day period, the undersigned will provide you with the name and address of the original creditor, if different from the current creditor.
6. Any information obtained will be used for the purpose of attempting to collect the debt/enforce or foreclose the lien.

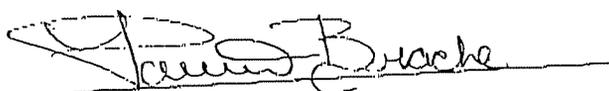
THE RIGHT TO VERIFICATION OF THE DEBT OR LIEN AND IDENTITY OF THE ORIGINAL CREDITOR WITHIN THE TIME PROVIDED BY LAW ARE NOT AFFECTED BY THIS ACTION.

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VERIFICATION

I, Patty Brache, Collections Manager of City-County Federal Credit Union, 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.

Dated: September 17, 2004.


Patty Brache

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Credit Agreement and
 Truth in Lending Disclosure

1
 CREDIT AGREEMENT AND TRUTH IN LENDING DISCLOSURE
Continued below.

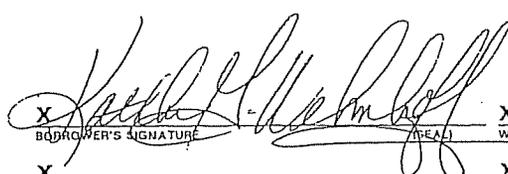
INTRODUCTION. This LOANLINER Home Equity Plan Credit Agreement and Truth in Lending Disclosure will be referred to as this "Plan." This Plan consists of this Agreement and the accompanying Addendum which is incorporated into and becomes a part of this Credit Agreement and Truth in Lending Disclosure. The words "you," "your," and "Borrower" mean each person who signs this Plan. The words "we," "us," "our," "Lender," and "credit union" mean the credit union whose name appears above or anyone to whom the credit union transfers its rights under this Plan.

COLLECTION COSTS: You promise to pay, subject to any limits under applicable law, all costs of collecting the amount you owe under this agreement. This includes but is not limited to reasonable attorney fee and court costs as well as legal expenses for any bankruptcy, appeals or postjudgment proceedings.

2
 SIGNATURES

By signing below you agree that you have read the LOANLINER Home Equity Plan Credit Agreement and Truth in Lending Disclosure and Addendum and agree to be bound by the terms of the Agreement. You also acknowledge receipt of a copy of this

Agreement, and the Home Equity Early Disclosure and handbook entitled "When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit" given to you at the time of application.

		X	X
BORROWER'S SIGNATURE	(SEAL)	WITNESS	DATE
X	X	X	X
BORROWER'S SIGNATURE	(SEAL)	WITNESS	DATE

CREDIT AGREEMENT AND TRUTH IN LENDING DISCLOSURE
(Continued)

HOW THIS PLAN WORKS. This Plan establishes a revolving line of credit account ("account"). You and the credit union anticipate that you will obtain a series of advances under this Plan from time to time. The maximum amount you can borrow ("credit limit") is disclosed in the Addendum. It is the amount of credit you may borrow, repay all or a portion and re-borrow subject to the terms of this Plan.

PROMISE TO PAY. You promise to repay to the credit union, or order, all advances made to you under this Plan, plus finance charges, other applicable charges, and costs of credit insurance for which you are responsible under this Plan. You agree to pay the Minimum Payment on or before the due date.

JOINT ACCOUNTS. If this is a joint account, each of you must sign this Plan and you will be individually and jointly responsible for paying all amounts owed. This means that the credit union can require any one

of you to repay all advances plus applicable finance charges, other applicable charges, and credit insurance costs. Unless the credit union's written policy requires all of you to sign for an advance, each of you authorizes the other(s) to obtain advances individually and agrees to repay advances made to the other(s). The credit union can release one of you from responsibility under this Plan without releasing the other(s).

SECURITY INTEREST. This Plan is secured by mortgage, deed of trust, security deed, or security agreement (the "security instrument") in your dwelling which is described in the Addendum.

PROMISES IN SECURITY INSTRUMENT. The security instrument you sign the same day you sign this Plan is incorporated by reference into this Plan. You must keep all the promises you made in the security instrument.

(Continued)

EXHIBIT 1

CREDIT AGREEMENT AND TRUTH IN LENDING DISCLOSURE

(Continued)

DRAW AND REPAYMENT PERIODS. Subject to the "Lender's Rights" paragraph below, you can obtain advances of credit during the "draw period." The length of the draw period is disclosed in the Addendum. At our option, we may renew or extend the draw period. After the draw period ends, the repayment period will begin. You will no longer be able to obtain credit advances. The length of the repayment period will depend on the balance at the time of the last advance you obtain before the draw period ends unless a specific repayment period is disclosed in the Addendum.

PAYMENTS. Your Minimum Payment will be determined as shown on the Addendum. Your payments will be due monthly during both the draw and repayment periods. Each time a payment changes you will receive a voucher or other notice showing the amount and due date of the new payment. Your Minimum Payment will never be less than the smaller of the amount shown on the Addendum, or the full amount that you owe.

APPLICATION OF PAYMENTS. Payments will be applied in the order the credit union chooses to any finance charges, credit insurance costs, and other applicable charges due before being applied to your unpaid balance.

CREDIT LIMIT. You promise not to request or obtain an advance that will make your balance exceed your credit limit. Your credit limit will not be increased if you exceed your credit limit. If you exceed your credit limit, you agree to repay the excess immediately.

ACCESS DEVICES. You can obtain credit advances in any manner authorized by the credit union from time to time. Your application for this account also serves as a request to receive any additional access devices which may be available in the future in connection with this Plan. The terms of this Plan will also apply to any future access devices.

TRANSACTION LIMITATIONS. The credit union may require a certain minimum advance amount or may limit the number of advances you may obtain. The transaction limitations on this Plan, if any, are disclosed in the Addendum.

COST OF CREDIT. The finance charge is the cost you pay for credit. Unless described otherwise on the Addendum, the finance charge on each new advance begins on the date of the advance and continues until the advance has been paid in full. There is no "free ride period" which would allow you to avoid a finance charge. To compute the finance charge, the unpaid balance for each day since your last payment (or since an advance if you have not yet made a payment) is multiplied by the applicable periodic rate. The sum of those amounts is the finance charge owed. The periodic rate and corresponding annual percentage rate are disclosed in the Addendum. The balance used to compute the finance charge is the unpaid balance each day after payments and credits to that balance have been subtracted and any new advances have been added.

ANNUAL PERCENTAGE RATE. The annual percentage rate under this Plan includes only interest and no other costs. The Addendum shows the current interest rate as a periodic rate and a corresponding annual percentage rate. If the interest rate for this Plan is a variable interest rate the Addendum explains how the variable interest rate works. If we forego an annual percentage rate increase, we may return to the full index and margin at a later adjustment subject to any rate limitations.

OTHER CHARGES. In addition to finance charges, your account is subject to certain other charges as described in this Plan and the Addendum. The credit union can add any of these other charges to your balance or you can pay them in cash.

CHARGES TO YOUR ACCOUNT. We may charge your account to pay other fees and costs that you are obligated to pay under this Plan or under the security instrument. In addition, we may charge your account for funds required for continuing property insurance coverage or costs to protect or perfect our security interest in your dwelling. These costs or expenses include, without limitation, payments to cure defaults under any existing liens on your dwelling. If you do not pay your property taxes, we may charge your account and pay the delinquent taxes. Any amount so charged to your account will be a credit advance. However, we have no obligation to provide any of the credit advances referred to in this paragraph.

LENDER'S RIGHTS:

- (a) **Termination and Acceleration.** We can terminate your credit line and require you to pay us the entire outstanding balance in one payment, and charge you certain fees, if any of the following happen:
- (1) You engage in fraud or make a material misrepresentation at any time in connection with this Plan. This can include, for example, a false statement about your income, assets, liabilities, or any other aspects of your financial condition.
 - (2) You do not meet the repayment terms of this Plan.
 - (3) Your action or inaction adversely affects the collateral for this Plan or our rights in the collateral. This can include, for example failure to maintain required insurance, waste or destructive use of the property, failure to pay taxes, death of all persons liable on the account, transfer of title or sale of the property, creation of a senior lien on the property without our permission, foreclosure by a prior lienholder, use of the dwelling for prohibited purposes, or taking of the property through eminent domain.
- (b) **Suspension or Reduction.** In addition to any other rights we may have, we can suspend additional extensions of credit or reduce your credit limit during any period in which any of the following are in effect:

{Continued

**CREDIT
AGREEMENT
AND TRUTH
IN LENDING
DISCLOSURE**

(Continued)

- (1) The value of the property securing this Plan declines significantly below the property's appraised value for purposes of this Plan. This includes, for example, a decline such that the initial difference between the credit limit and the available equity is reduced by fifty percent and may include a smaller decline depending on the individual circumstances.
- (2) We reasonably believe that you will be unable to fulfill your payment obligations under this Plan due to a material change in your financial circumstances.
- (3) You are in default of a material obligation of this Plan. We consider all of your obligations to be material. No default will occur until we mail or deliver a notice of default to you.
- (4) We are precluded by government action from imposing the annual percentage rate provided for under this Plan.
- (5) The priority of our security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit limit.
- (6) We have been notified by a regulatory authority that continued advances may constitute an unsafe and unsound business practice.
- (7) The maximum annual percentage rate under this Plan has been reached.
- (c) **Change in Terms.** We may make changes to the terms of this Plan if you agree to the change in writing at that time, if the change will unequivocally benefit you throughout the remainder of this Plan, or if the change is insignificant (such as changes relating to our data processing systems). We may also change the terms of this Plan in accordance with other reasons, if stated on the Addendum. If this Plan follows an index and the index is no longer available, we will choose a new index and margin. The new index will have an historical movement substantially similar to the original index, and the new index and margin will result in an annual percentage rate that is substantially similar to the rate in effect at the time the original index becomes unavailable.
- USE OF ACCOUNT.** You promise to use your account for consumer (personal, family or household) purposes, unless the credit union gives you written permission to use the account also for agricultural or commercial purposes, or to purchase real estate.
- MEMBERSHIP IN CREDIT UNION.** You must be a member of the credit union to obtain credit advances.
- CONFLICTING INSTRUCTIONS.** You agree not to provide conflicting instructions to us regarding your Plan (such as instructing us not to make credit advances to a joint borrower).
- PREPAYMENT.** You may prepay all or part of what you owe at any time without any prepayment penalty.
- CANCELLATION BY YOU.** You can cancel your right to future credit advances under this Plan, by notifying us in writing. Despite cancellation, your obligations under this Plan will remain in full force and effect until you have paid us all amounts due.
- TAX CONSEQUENCES.** You should consult a tax advisor regarding the deductibility of interest and charges under this Plan.
- STATEMENT AND NOTICES.** On a regular basis the credit union will send a statement showing all transactions on your account during the period covered by the statement. Statements and notices will be mailed to you at the most recent address you have given the credit union in writing. Notice to any one of you will be notice to all.
- TRANSFER OR ASSIGNMENT.** You cannot assign your rights and obligations under this Plan. In spite of any divorce or agreement between joint borrowers each is responsible for the total amount owed under this Plan. Subject to applicable law, we reserve the right to sell or transfer this Plan to another lender entity or person, and to assign our rights under the security instrument.
- UPDATING INFORMATION.** You promise that you will give us updated financial information an information about matters affecting the title an value of the property securing this Plan. You agree that we may obtain credit reports and appraisals at our option and expense for any reason.
- PROPERTY INSURANCE.** You promise to insure the property that secures this Plan, in the amount the credit union requires, against fire and other hazards (including flood insurance if the credit union requires it). You may obtain property insurance from anyone you want that is acceptable to the credit union. We have the right not to accept the insurer if reasonable cause. Subject to applicable law, if you fail to obtain or maintain insurance as required, we may purchase insurance to protect our own interests add the premium to your balance and/or pursue all other remedies available to us.
- NO WAIVER.** The credit union can delay enforcement of any of its rights under this Plan without losing any of its rights.
- CONTINUED EFFECTIVENESS.** If the law makes a term(s) of this Plan unenforceable, the other terms will remain in effect.

YOUR BILLING RIGHTS -- KEEP THIS NOTICE FOR FUTURE USE

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

NOTIFY US IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR STATEMENT. If you think your statement is wrong, or if you need more information about a transaction on your statement, write us on a separate sheet at the address listed on your statement. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first statement on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

If you have authorized us to pay a credit card account automatically from your share account or share draft account, you can stop the payment on any amount you think is wrong. To stop the payment your letter must reach us three business days before the automatic payment is scheduled to occur.

YOUR RIGHTS AND OUR RESPONSIBILITIES AFTER WE RECEIVE YOUR WRITTEN NOTICE. We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the statement was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to send statements to you for the amount you question, including finance

charges, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your statement that are not in question.

If we find that we made a mistake on your statement, you will not have to pay any finance charges related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your statement. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is.

If we don't follow these rules, we can't collect the first \$50 of the questioned amount, even if your statement was correct.

SPECIAL RULE FOR CREDIT CARD PURCHASES. If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services. There are two limitations on this right: (a) You must have made the purchase in your home state or, if not within your home state, within 100 miles of your current mailing address; and (b) The purchase price must have been more than \$50.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

813552-29

CITY-COUNTY FEDERAL CREDIT UNION
 6010 Earle Brown Drive
 Brooklyn Center, MN 55430-2506

ADDENDUM

This Addendum is incorporated into and becomes a part of your LOANLINER® Credit Agreement and Truth in Lending Disclosure.

OPENING DATE 8/23/2002	FINAL PAYMENT DATE 8/23/2007	CREDIT LIMIT \$18,000.00	ACCOUNT NUMBER 813552-29
BORROWER NAME AND ADDRESS KATHLEEN G. WEHMHOFF 14388 PENNOCK AVENUE APPLE VALLEY, MINNESOTA 55124		ADDRESS OF PROPERTY SECURING ACCOUNT	

INDEX RATE 4.75 %	MARGIN ADDED TO INDEX 3.00 %	ANNUAL PERCENTAGE RATE 7.75 %	DAILY PERIODIC RATE .021232 %
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SCHEDULE OF CLOSING COSTS:

Description	Amount	Description	Amount
TITLE SEARCH P.O.C.	\$ 175.00		\$
FLOOD SEARCH P.O.C.	\$ 122.00		\$
RECORDING FEES P.O.C.	\$ 125.00		\$
MTG. REG. TAX P.O.C.	\$ 141.40		\$
	\$		\$

PAYMENT INFORMATION. You can obtain advances of credit for 5 years. This period is called the "draw period." After the draw period ends you will no longer be able to obtain credit advances and you will then be required to repay the outstanding balance in a single balloon payment. You will be required to make monthly payments during the draw period. Your minimum monthly payment will be equal to:

- 1) \$12/\$1000 of the outstanding balance as of the last advance if the ANNUAL PERCENTAGE RATE is below 12%;
- 2) \$14/\$1000 of the outstanding balance as of the last advance if the ANNUAL PERCENTAGE RATE is 12% or greater, but less than 16%; or
- 3) \$16/\$1000 of the outstanding balance as of the last advance if the ANNUAL PERCENTAGE RATE is 16% or greater.

Your minimum payment will never be less than the smaller of \$50, or the full amount that you owe. If you pay monthly, your payment will be rounded to the nearest dollar. If you pay bi-weekly, your payment will not be rounded. We will recalculate your payment each time you obtain an advance and each time you move into another payment range as listed above. If the interest rate changes, the number of payments or amount of the payment may change. In addition to your minimum payment, you will be required to pay any amounts past due and any amount by which you have

exceeded your credit limit, and all other charges.

The minimum payment may not fully repay the principal that is outstanding on your line by the end of the draw period. You will then be required to either pay the entire balance in a single "balloon" payment or refinance the balloon with us. Alternatively, at our option, we may renew or extend the draw period. Unless otherwise required by applicable law, we are under no obligation to refinance the balloon payment at that time. You may be required to make payments out of other assets you own or find a lender, which may be us, willing to lend you money. If you refinance the balloon with us, you may have to pay some or all of the closing costs normally associated with a new loan.

TRANSACTION REQUIREMENTS. The minimum credit advance that you can receive is \$500.00.

PERIODIC RATE AND CORRESPONDING ANNUAL PERCENTAGE RATE. We will determine the periodic rate and the corresponding annual percentage rate as follows. The annual percentage rate is based on the lower of the following two index rates plus margins: 1) The monthly average yield on United States Treasury securities adjusted to a constant maturity of 5 years as published in the Federal Reserve weekly statistical release H.15(519). This index is increased by a margin of 3.50 % and rounded up to the nearest .125%.

2) The monthly average bank prime loan rate as published in

the Federal Reserve weekly statistical release H.15(519). This index is increased by a margin of 3.00 %.

The index rate used will be the average rate for the second month of the previous quarter. We then divide this sum by the number of days in a year (365). To obtain the annual percentage rate we will multiply the periodic rate by the number of days in a year (365). This result is the annual percentage rate.

The annual percentage rate can change quarterly on the first working day of January, April, July, and October. There is no limit on the amount by which the annual percentage rate can change during any one year period. The maximum ANNUAL PERCENTAGE RATE that can apply is 18% or the maximum permitted by law, whichever is less.

ADDITIONAL PROVISIONS.

SHAREDRAFT ACCESS: We may authorize you to obtain credit advances by writing sharedrafts on your home equity account. We reserve the right not to honor a sharedraft in the following circumstances:

- (a) Your Credit Limit has been or would be exceeded by paying the sharedraft.
- (b) Your sharedraft is post-dated. If a post-dated sharedraft is

paid and as a result any other check is returned or not paid, we are not responsible.

(c) Your sharedrafts have been reported lost or stolen. You should notify us at once if your sharedrafts are lost or stolen.

(d) Your sharedraft is not signed by an "Authorized Signer", which means a person who signed this Agreement, or has signed a separate signature card for the account.

(e) Your account has been terminated or suspended as provided in this Agreement.

(f) The amount of your sharedraft is less than the minimum amount required by this Agreement or you are in violation of any other transaction requirement.

If we pay any sharedraft under these conditions, you must repay us for the amount of the sharedraft and any charges permitted by law. The sharedraft itself will be evidence of your debt to us together with this Agreement. Our liability, if any, for wrongful dishonor of a sharedraft is limited to your actual damages. Dishonor for any reason as provided in the Agreement is not wrongful dishonor. We may not return the sharedrafts along with your periodic statements; however, your use of a sharedraft will be reflected on your periodic statement as a credit advance. We do not "certify" sharedrafts drawn on your account.

813552-29

486443

475-88-2175

OFFICE OF THE REGISTRAR OF TITLES
DAKOTA COUNTY, MINNESOTA
CERTIFIED THAT THE WITHIN INSTRUMENT
WAS RECORDED IN THIS OFFICE ON AND AT

2002 JAN 11 A 10:37
486443

DOC. NO. 486443
CERTIFICATE NO. 1035100
VOLUME PAGE
JOEL T. BERKMAN, REGISTRAR OF TITLES
BY: [Signature] Deputy
FEE 200 SURCHARGE 00
ASSURANCE FUND MISC FEE
NON-ASSUR CHECK () ESCROW (X)
CASH () WELL () CHARGE ()
CHARGE TO: O/R

DAKOTA COUNTY TREASURER-AUDITOR
81/86/2803 15:58:00 731854
REGISTRATION TAX 41.48
COUNTY CONSERVATION FEE 5.00
RECEIPT NUMBER 564687

[Handwritten Signature]

REVOLVING CREDIT MORTGAGE ⁸¹⁰⁰ 00:5964
813552-29

THIS MORTGAGE CONTAINS A DUE-ON-SALE PROVISION AND SECURES INDEBTEDNESS UNDER A CREDIT AGREEMENT WHICH PROVIDES FOR A REVOLVING LINE OF CREDIT AND MAY CONTAIN A VARIABLE RATE OF INTEREST.

THIS MORTGAGE is made on AUGUST 23, 2002, between the Mortgagor,
KATHLEEN G. WEHMHOF AND COLLEEN J. WEHMHOF, BOTH SINGLE **C. U. TITLE**

(herein "Borrower"), and the Mortgagee, City-County Federal Credit Union, a corporation organized and existing under the laws of United States Federal Credit Union Act, whose address is 6010 Earle Brown Drive
Brooklyn Center, MN 55430 (herein "Lender").

WHEREAS, Borrower is indebted to Lender as described in this paragraph;
TO SECURE to Lender:

(1) The repayment of all indebtedness due and to become due under the terms and conditions of the LOANLINER Home Equity Plan Credit Agreement and Truth-in-Lending Disclosures made by Borrower and dated the same day as this Mortgage, and all modifications, amendments, extensions and renewals thereof (herein "Credit Agreement"). Lender has agreed to make advances to Borrower under the terms of the Credit Agreement, which advances will be of a revolving nature and may be made, repaid, and remade from time to time. Borrower and Lender contemplate a series of advances to be secured by this Mortgage. The total outstanding principal balance owing at any one time under the Credit Agreement (not including finance charges thereon at a rate which may vary from time to time, and any other charges and collection costs which may be owing from time to time under the Credit Agreement) shall not exceed

EIGHTEEN THOUSAND AND NO/100 DOLLARS

(\$18,000.00). That sum is referred to herein as the Maximum Principal Balance and referred to in the Credit Agreement as the Credit Limit. The entire indebtedness under the Credit Agreement, if not sooner paid, is due and payable 5 years from the date of this Mortgage.

(2) The payment of all other sums advanced in accordance herewith to protect the security of this Mortgage, with finance charges thereon at a rate which may vary as described in the Credit Agreement.

(3) The performance of covenants and agreements of Borrower herein contained.

BORROWER does hereby mortgage, grant and convey to Lender the following described property located in the County of DAKOTA, State of Minnesota:

LOT NINE [9], BLOCK ONE [1], PENNOCK SHORES, DAKOTA COUNTY, MINNESOTA.

TORRENS PROPERTY CERTIFICATE NUMBER: 123866

[Handwritten Stamp]
REC-05-002
D. J. [Signature]

which has the address of 14388 PENNOCK AVENUE

APPLE VALLEY (City), Minnesota 55124 (herein "Property Address");
(City) (Zip Code)

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and fixtures, all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property."

Complete if applicable:
This Property is part of a condominium project known as _____

This Property includes Borrower's unit and all Borrower's rights in the common elements of the condominium project.

This Property is in a Planned Unit Development known as _____

EXHIBIT 2

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Finance Charges and Other Charges.** Borrower shall promptly pay when due all amounts borrowed under the Credit Agreement, all finance charges and applicable other charges and collection costs as provided in the Credit Agreement.

2. **Funds for Taxes and Insurance.** Subject to applicable law, Lender, at Lender's option, may require Borrower to pay to Lender on the day monthly payments of principal and finance charges are payable under the Credit Agreement, until all sums secured by this Mortgage are paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments (including condominium and planned unit development assessments, if any) which may attain priority over this Mortgage, and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance and flood insurance, if applicable, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Borrower shall not be obligated to make such payments of Funds to Lender to the extent that Borrower makes such payments to the holder of a prior mortgage or deed of trust if such holder is an institutional Lender.

If Borrower pays Funds to Lender, the Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Mortgage that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Mortgage.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

Upon payment in full of all sums secured by this Mortgage, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 22 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Mortgage.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under the Credit Agreement and paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 2 hereof, second, (in the order Lender chooses) to any finance charges, other charges and collection costs owing, and third, to the principal balance under the Credit Agreement.

4. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Except to the extent that any such charges or impositions are to be made to Lender under paragraph 2, Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any. Within five days after any demand by Lender, Borrower shall exhibit to Lender receipts showing that all amounts due under this paragraph have been paid when due.

5. **Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," floods, and such other hazards as Lender may require and in such amounts and for such periods as Lender may require. Unless Lender in writing requires otherwise, the policy shall provide insurance on a replacement cost basis in an amount not less than that necessary to comply with any coinsurance percentage stipulated in the hazard insurance policy, and the amount of coverage shall be no less than the Maximum Principal Balance plus the full amount of any lien which has priority over this Mortgage.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. All insurance proceeds are hereby assigned to Lender and shall be paid to Lender to the extent of all sums secured by this Mortgage, subject to the terms of any mortgage, deed of trust or security agreement with a lien which has priority over this Mortgage. Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restore or repair the Property, if it is economically feasible to do so.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

6. **Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and the constituent documents.

7. **Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest. Any amounts disbursed by Lender pursuant to this paragraph 7, with finance charges thereon, at the rate provided in the Credit Agreement, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder. Any action taken by Lender under this paragraph shall not cure any breach Borrower may have committed of any covenant or agreement under this Mortgage. Borrower agrees that Lender is subrogated to all of the rights and remedies of any prior lienor, to the extent of any payment by Lender to such lienor.

8. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

9. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, to the extent of any indebtedness under the Credit Agreement, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

10. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender 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.

11. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 21 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Mortgage, but does not execute the Credit Agreement, (a) is co-signing this Mortgage only to mortgage, grant and convey that Borrower's interest in the Property to Lender under the terms of this Mortgage, (b) is not personally liable under the Credit Agreement or under this Mortgage, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations or amendments with regard to the terms of this Mortgage or the Credit Agreement, without that Borrower's consent and without releasing that Borrower or modifying this Mortgage as to that Borrower's interest in the Property.

12. **Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

13. **Governing Law; Severability.** The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Credit Agreement conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Credit Agreement which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Credit Agreement are declared to be severable. As used herein, "costs," "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

14. **Prior Mortgage or Deed of Trust; Modification; Future Advance.** Borrower shall not enter into any agreement with the holder of any mortgage, deed of trust or other security agreement which has priority over this Mortgage by which that security agreement is modified, amended, extended, or renewed, without the prior written consent of the Lender. Borrower shall neither request nor accept any future advance under a prior mortgage, deed of trust, or other security agreement without the prior written consent of Lender.

15. **Borrower's Copy.** Borrower shall be furnished a copy of the Credit Agreement and a conformed copy of this Mortgage at the time of execution or after recordation hereof.

16. **Rehabilitation Loan Agreement.** Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Borrower may enter into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

17. **Waiver of Homestead Exemption.** Borrower hereby waives the benefit of the homestead exemption as to all sums secured by this Mortgage.

18. **Waiver of Statutes of Limitation.** Borrower hereby waives, to the full extent permitted by law, statutes of limitation as a defense to any demand or obligation secured by this Mortgage.

19. **Merger.** There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

20. **Notice of Transfer of the Property; Advances after Transfer.** Borrower shall give notice to Lender, as provided in paragraph 12 hereof, prior to any sale or transfer of all or part of the Property or any rights in the Property. Any person to whom all or part of the Property or any right in the Property is sold or transferred also shall be obligated to give notice to Lender, as provided in paragraph 12 hereof, promptly after such transfer.

Even if Borrower transfers the Property, Borrower will continue to be obligated under the Credit Agreement and this Mortgage unless Lender releases Borrower in writing. As a condition to Lender's consent to any proposed transfer or as a condition to the release of Borrower, Lender may require that the person to whom the Property is transferred sign an assumption agreement satisfactory to Lender and Lender may impose an assumption fee. The assumption agreement will not entitle the person signing it to receive advances under the Credit Agreement.

21. **Transfer of the Property.** Subject to applicable law, Lender shall have the right to accelerate, that is, to demand immediate payment in full of all sums secured by this Mortgage or Deed of Trust, if Borrower, without the written consent of Lender, sells or transfers all or part of the Property or any rights in the Property.

If Lender exercises the option to accelerate, Lender shall give Borrower notice of acceleration in accordance with paragraph 12 hereof. The notice shall provide a period of not less than 30 days from the date of the notice within which Borrower may pay the sums declared due. If Borrower fails to pay those sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by paragraph 22 hereof.

22. Default; Termination and Acceleration; Remedies. Each of the following events shall constitute an event of default ("event of default") under this Mortgage: (1) Borrower commits fraud or makes a material misrepresentation in connection with this Mortgage or the Credit Agreement; (2) Borrower does not meet the repayment terms of the Credit Agreement; or (3) Borrower's action or inaction adversely affects the Lender's rights in the Property secured by this Mortgage. If default occurs, then prior to exercising any right or remedy provided for in this Mortgage and prior to acceleration, Lender shall give notice to Borrower as provided in paragraph 12 hereof specifying: (1) the event of default; (2) the action required to cure such event of default; (3) a date, not less than 30 days from the date the notice is mailed to Borrower, by which such event of default must be cured; (4) that failure to cure such event of default on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of an event of default or any other defense of Borrower to acceleration and sale.

If the event of default is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all sums secured by this Mortgage to be immediately due and payable without further demand and may invoke the power of sale hereby granted and any other remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 22, 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 the person, if any, 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 Lender's designee may purchase the Property at any sale. The Proceeds of the sale shall be applied in the following order: (a) to all sums secured by this Mortgage; (b) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable attorneys' fees and costs of title evidence; and (c) the excess, if any, to the person or persons legally entitled thereto.

23. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Mortgage due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued at any time prior to sale of the Property pursuant to the power of sale contained in this Mortgage if: (a) Borrower pays Lender all sums constituting the default actually existing under this Mortgage and the Credit Agreement at the commencement of foreclosure proceedings under this Mortgage; (b) Borrower cures all events of default; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage, and in enforcing Lender's remedies as provided in paragraph 22 hereof, including, but not limited to, reasonable attorneys' fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

24. Release. This Mortgage secures a revolving line of credit and advances may be made, repaid, and remade from time to time, under the terms of the Credit Agreement. When Borrower (1) has paid all sums secured by this Mortgage and (2) had requested that the revolving line of credit be canceled, Lender shall discharge this Mortgage. To the extent permitted by law, Lender may charge Borrower a fee for such discharge and require Borrower to pay costs of recordation, if any.

25. Notice of Default. Borrower and Lender may request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender, at Lender's address set forth on page one of this Mortgage, of any default under the superior encumbrance and of any sale or other foreclosure action. A separate request for notice of sale in accordance with Minnesota Statutes Section 580.032 may be recorded contemporaneously with this deed of trust.

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

X *Kathleen G. Wehmhoff*
KATHLEEN G. WEHMHOFF
Borrower

X *Colleen J. Wehmhoff*
COLLEEN J. WEHMHOFF
Borrower

X _____
Borrower

X _____
Borrower

STATE OF Minnesota, HENNEPIN County ss:

The foregoing instrument was acknowledged before me this 23RD DAY OF AUGUST, 2002 by
KATHLEEN G. WEHMHOFF AND COLLEEN J. WEHMHOFF, BOTH SINGLE (date)
(person acknowledging)

My Commission expires _____ (person acknowledging)
PAUL E. BRAMMER
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005
Notary Public *Paul E. Brammer*

This instrument was prepared by City-County Federal Credit Union (Name)
of 6010 Earle Brown Dr. Brooklyn Center, Minnesota.
(Address)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case Number 04-33997-GFK

Kathleen Georgia Wehmhoff,

Chapter 13 Case

Debtor.

MEMORANDUM IN SUPPORT OF MOTION FOR
RELIEF FROM THE AUTOMATIC STAY

City-County Federal Credit Union ("City-County") submits this memorandum in support of its motion for relief from the automatic stay.

FACTS

City-County Federal Credit Union holds a claim under a note and mortgage in the amount of \$19,339.09, plus interest at \$3.59 per day after September 13, 2004, plus attorney's fees. The debt is secured by real property described as Lot 9, Block 1, Pennock Shores, Dakota County, Minnesota; ("the subject real estate"), by the terms of the mortgage dated August 23, 2002, filed January 11, 2003, as document number 486443, in the office of the Dakota County Registrar of Titles. A copy of the mortgage is attached to the Notice of Hearing and Motion for Relief from the Automatic Stay as Exhibit 2.

The subject real estate has a scheduled value of \$160,500.00 and a 2004 estimated market value for taxes payable in 2005 of \$160,500.00. The property is subject to a first mortgage, also in default, in favor of Wells Fargo, in the amount of \$132,667.00 as of the date of filing; according to the schedules of the debtor.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, the court shall grant relief from the automatic stay upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. Section 362(d)(1). The debtor has little equity in the secured property and the debtor has failed to make payments post-petition. Such failure to make payments constitutes cause entitling City-County to relief from the stay under Section 362(d)(1). *United Savings Assn. of Texas v. Timbers of Inwood Forest Assoc., Ltd.* (*In re Timbers of Inwood Assoc., Ltd.*), 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988).

Pursuant to Section 362(g) of Title 11, the burden is on the debtor to prove the absence of cause or the presence of adequate protection. The debtor has not offered adequate protection, and the failure to make payments constitutes cause for relief from the stay. *See, Reinbold v. Dewey County Bank*, 942 F.2d 1304, 1306-1307 (8th Cir. 1991). The failure to make payments on a secured claim not paid as provided in a Chapter 13 plan is sufficient cause for relief from the automatic stay. *In re Kim*, 71 B.R. 1011 (Bankr. C.D. Cal. 1987), *In re Elmore*, 94 B.R. 670 (Bankr. C.D. Cal. 1988).

The effect of granting relief from the stay will be only to allow City-County to begin the foreclosure process, which will provide an opportunity for the debtor to reinstate the mortgage by paying the default amounts and certain costs prior to the time of a foreclosure sale. The delay of the foreclosure process and the existence of the first mortgage in default will cause loss to City-County in that the limited equity cushion of the debtor, less than six percent. A six percent equity cushion will disappear over the term of the foreclosure process, which in Minnesota normally continues for at least nine months due to a 30-day pre-foreclosure notice period, an

approximately eight-week service and publication period, and a six-month redemption period, often followed by a one-month eviction period. City-County is denied its pre-petition secured property interest in the collateral and its losses are increasing due to the increasing mortgage balances on the two mortgages and the additional amounts of prior secured claims that will be payable due to increased amounts due on the first mortgage, plus amounts due for taxes and insurance that may not be paid by the debtor.

CONCLUSION

City-County Federal Credit Union is entitled to modification of the stay to allow it to pursue its remedies under state law and to foreclose its mortgage in the secured real property because of the minimal equity of the debtor in the secured property and the failure of the debtor to make payments after the filing of the Chapter 13 petition in this case.

Dated: September 14, 2004.

Respectfully submitted,

/e/ Lee W. Mosher

Lee W. Mosher

Attorney License Number 7570X

Davern McLeod & Mosher LLP

Suite 150

7500 Olson Memorial Highway

Golden Valley, Minnesota 55427

Telephone 763-545-5600

Attorneys for City-County Federal Credit Union

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case Number 04-33997-GFK

Kathleen Georgia Wehmhoff,

Debtor.

Chapter 13 Case

CERTIFICATE OF SERVICE

Melissa M. Peterson of the City of Plymouth, County of Hennepin, State of Minnesota, certifies under penalty of perjury that on September 14, 2004, she served the following:

1. Notice of Hearing and Motion for Relief from the Automatic Stay;
2. Memorandum in Support of Motion for Relief from the Automatic Stay;
3. Certificate of Service; and
4. Proposed Order Granting Relief from Stay.

on each person named below by mailing to each of them a copy thereof, enclosed in an envelope, postage prepaid, and by depositing same in the mail at Golden Valley, Minnesota, directed to each person at the address shown below.

Kathleen G. Wehmhoff
14388 Pennock Avenue South
Apple Valley, MN 55124

Jasmine Z. Keller
Chapter 13 Trustee
Suite 310
12 South Sixth Street
Minneapolis, MN 55402

Becky A. Moshier
Attorney at Law
Suite 420
2233 University Avenue West
St. Paul, MN 55114

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

/e/ Melissa M. Peterson

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Kathleen Georgia Wehmhoff,
Debtor.

Case Number 04-33997-GFK

Chapter 13 Case

ORDER GRANTING RELIEF FROM STAY

The motion of City-County Federal Credit Union for relief from the automatic stay came before the undersigned on September 27, 2004. The appearances were as noted on the record.

Based on the arguments of counsel, all of the files, records, and proceedings herein, the court being advised in the premises, and the court's findings of fact and conclusions of law, if any, having been stated orally and read in open court following the closing of evidence.

IT IS HEREBY ORDERED:

1. The automatic stay is hereby modified to permit City-County Federal Credit Union to proceed with its remedies regarding the real property in which it asserts an interest, namely, Lot 9, Block 1, Pennock Shores, Dakota County, Minnesota.

3. Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this order is effective immediately.

Dated: _____, 2004.

Gregory F. Kishel
United States Bankruptcy Judge