

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Reflections Homes, Inc.

Bky.No. 04-50969

Chapter 11

Debtor.

**NOTICE OF HEARING AND MOTION FOR APPROVAL OF A STIPULATION
WITH WILLIAM J. AMERY, RONNIE J. KIRSCHLING AND DEBTOR
AUTHORIZING ASSUMPTION OF LEASE**

TO: The entities specified in Local Rule 9013-3

1. Reflections Homes, Inc. (“Debtor”) and William J. Amery and Ronnie J. Kirschling, (“Lessors”) through his undersigned attorney, moves the court for the relief requested below and give notice of hearing.

2. The court will hold a hearing on this motion at 1:30 p.m.on November 3rd, 2004, before the Honorable Gregory F. Kishel, Courtroom 2, U.S. Courthouse, in the City of Duluth, County of St. Louis, State of Minnesota.

3. Any response to this motion must be filed and served by October 27th, 2004, which is five (5) days prior to the hearing or filed and served by mail by October 29th, 2004, which is seven (7) days prior to the hearing. **Unless a response opposing the motion is timely filed, the Court may grant the motion without a hearing.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding within meaning of 28 U.S.C. §157(b)(2). The Petition commencing this case was filed on August 28th, 2004. This case is now pending in this Court.

5. This motion arises under 11 U.S.C. §365 and Bankruptcy Rule 6006. This motion is filed under Bankruptcy Rule 9014 and Local Rule 9013. Debtor and Lessors request relief with respect to authority to enter into a Stipulation Authorizing Assumption of Lease with Lessors (the “Stipulation”). A copy of the Stipulation is attached hereto as **Exhibit A**.

BACKGROUND

6. On or about November 14th, 2003, the Debtor and William J. Amery and Ronnie J. Kirschling (“Lessors”) entered into a Lease Agreement. A copy of the Lease is attached hereto as **Exhibit B**.

7. Pursuant to the terms of the Lease, the Debtor leased from Lessors, the land and buildings at 2730 Greysolon Road in Duluth, Minnesota, St. Louis County.

Legally described as follows:

Lot Seven (7) Block Thirty-eight (38), HARRISON’S DIVISION OF DULUTH, Lot Eight (8), Block Thirty-eight (38) HARRISON’S DIVISION OF DULUTH, Lot Six (6), except the W’ly 45 feet thereof, Block Thirty-eight (38) HARRISON’S DIVISION OF DULUTH.

EXCEPT all minerals. Certificate of Title Number 146906. TORRENS PROPERTY

8. Pursuant to the Lease, the Debtor agreed to pay Lessors the sum of \$5,450.00 per month, payable in advance on the fifteen’s (15th) day of each month, subject to annual increases for property tax and inflation for fifteen years. However, pursuant to Schedule 1 and Article 3 of the Lease, a percentage of the rent was to be deferred in the first four years of the Lease with such deferral being collected in the next four years of the Lease or upon termination of the Lease by Lessee. However, pursuant to Schedule 1 and Article Three of the Lease, \$650.00 per month of each month’s rent in

2003 and 2004 was to be deferred with the deferral decreasing to \$350.00 in 2005 and \$150.00 in 2006. Such deferrals were to be made up in 2007, 2008, 2009 and 2010.

9. Pursuant to the Lease, Lessee agreed to pay all utility payments and be solely liable for all utility charges as they become due.

10. Pursuant to the Lease, the Debtor agreed to pay Lessors attorneys fees incurred upon a breach of the Lease or default in such Lease. The Debtor also agreed to maintain a fire insurance.

11. Pursuant to the Lease, the Debtor agreed that should the Lease terminate early, the Debtor would pay the total amount of deferred Lease payments, if any, at the date of Lease determination.

12. Pursuant to the Lease, the Debtor agreed to pay Lessors attorneys fees incurred upon a breach of the Lease or default in such Lease.

13. Debtor is in default under the Lease, having failed to make the Lease payments due for the months of June, July and August, 2004, prepetition, and September and October, 2004, postpetition.

14. As described more fully in the Stipulation attached hereto as **Exhibit A**, Debtor and Lessors have agreed that Debtor may assume its obligation under the Lease as follows:

- A. As a cure for Debtor's breach of the Lease, and as adequate assurance of future performance under the Lease, the Debtor shall pay the sum of \$10,345.20 for the postpetition rent by Thursday, October 14th, 2004, subject to the Court's approval upon this

motion. Should the Court not approve of this payment, Lessors shall return such funds to the Debtor.

- B. The Debtor shall also pay the sum of \$407.39, due to Waste Management to protect the Lessors from the property lien that the garbage hauler is entitled to file against the Lessors as owners of the building. This payment shall be made by October 14th, 2004, and is subject to the approval of the Court. Should the Court not approve this payment, Lessors shall return such funds to the Debtor.
- C. As a cure for Debtor's breach of the Lease, and as adequate assurance of future performance under the Lease, the Debtor shall make a payment of \$10,345.20 on or before November 5th, 2004, representing the current November rent as well as the June prepetition rent.
- D. As a cure for Debtor's breach of the Lease, and as adequate assurance of future performance under the Lease, payment of \$10,345.20 on or before December 5th, 2004, representing payment of the December rent as well as payment of the July prepetition rent.
- E. The Debtor shall make a payment of the August prepetition rent of \$5,172.60 in addition to the adjusted January 2005 monthly rent on or before January 5th, 2005.

F. Debtor shall execute any documents deemed necessary by Lessors to document the payment terms hereon agreed upon.

15. The Debtor has determined in the exercise of its sound business judgment that assumption of the Lease is in the best interest of its bankruptcy estate.

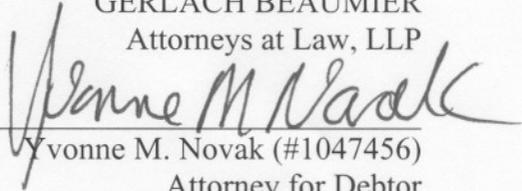
16. The land and buildings subject to the Lease have been used by the Debtor since the petition date and are necessary to the Debtor for its reorganization in order to provide services to its residence.

17. The terms of the Stipulation are reasonable and in the best interest of Debtors, its creditors and the bankruptcy estate.

18. If necessary, Debtor will call its president, Frederic Youngstrand, as a witness in connection with this motion.

WHEREFORE, Lessor prays that this Court approve the Stipulation and Assumption of the Lease, and for such other and further relief deems just and proper.

Dated: 10/25, 2004

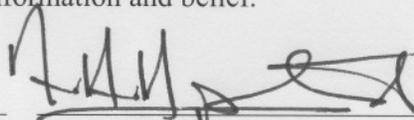
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VERIFICATION

I, Fredric Youngstrand, the President of Debtor, declare under penalty of perjury that the facts set forth in the foregoing Notice of Hearing and Joint Motion for Approval of a Stipulation with William J. Amery and Ronnie J. Kirschling, true and correct according to the best of my knowledge, information and belief.

Executed on:

10/25-04



Fredric Youngstrand

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Reflections Homes, Inc.

Bky.No. 04-50696
Chapter 11

Debtor.

UNSWORN CERTIFICATE OF SERVICE

I, Yvonne M. Novak, declare under penalty of perjury that on October 25th, 2004, I served copies of the attached:

1. Amended Debtor's and Lessor's Notice of Hearing and Motion for Approval of a Stipulation with William J. Amery and Ronnie J. Kirschling.

by sending a copy **via fax** of these documents to:

Mr. Frederic Dudderar, Jr.
Attorney for Lessors
Hanft Fride Law Firm
130 W. Superior Street
1000 US Bank Place
Duluth, MN 55802

Michael R. Fadlovich
Bankruptcy Trustee
US Courthouse Suite 1015
300 South Fourth Street
Minneapolis, MN 55415

Upper Lake Foods, Inc.
C/o Kirk Wimmer
801 Industry Avenue
Cloquet, MN 55720

And

by sending a copy **via mail** of these documents to:

Tom McCarney
P.O. Box 161361
Duluth, MN 55816

Ronnie J. Kirschling
C/o Mr. Frederic Dudderar, Jr.
Hanft Fride Law Firm
130 W. Superior Street

1000 US Bank Place
Duluth, MN 55802

William J. Amery
8541 Persimmon Drive
Fitchburg, WI 53711-5005

Office of US Trustee
1015 US Courthouse
300 South Fourth Street
Minneapolis, MN 55415

IRS District Counsel
650 Galtier Plaza
175 E. Fifth Street
St. Paul, MN 55101

IRS District Director
316 No. Roberts St. #389
St. Paul, MN 55101-1423

Minn. Dept. of Revenue
Collection Enforcment
551 Bankruptcy/PO 64447
St. Paul, MN 55164

United States Attorneys for
The District of Minnesota
600 U.S. Courthouse
300 S. 4th St.
Minneapolis, MN 55415

Dated this 25 day of October, 2004.

GERLACH BEAUMIER
Attorneys at Law, LLP

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