

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re: Bryan Sanford Engen and Jennine Marie  
Engen,

Debtors: Chapter 13 Case  
Case No. BKY 02-92798-GFK.

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

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TO: The Debtors, Debtors' Attorney, Chapter 13 Trustee, United States Trustee, and  
the other parties in interest specified in Local Rule 9013-3(a).

1. **Bank One, N.A. (Movant)**, a secured creditor of the Debtors herein, by its undersigned attorney, moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 10:30 o'clock a.m., on November 29, 2004, before the Honorable Gregory F. Kishel, in Courtroom 228B, U.S. Courthouse, 316 North Robert Street, St. Paul, MN, or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than November 23, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than November 17, 2004, which is seven (7) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT A HEARING.

4. This motion is filed pursuant to Bankruptcy Rule 4001 and Local Rule 9013-2 and Movant seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain real property owned by the Debtors and subject to Movant's first mortgage lien.

5. The Petition commencing this Chapter 13 Case was filed on September 27, 2002, and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §157(a), §1334, 11 U.S.C. §362(d), Bankruptcy Rule 5005, Local Rule 1070-1 and other applicable rules. This proceeding is a core proceeding.

6. By certain mortgage dated April 8, 1999, in the original principal amount of

\$22,200.00 (**Mortgage**), Movant acquired a first mortgagee's interest in the following real property (**Property**):

The West 150 feet of the East 525 feet of the South 300 feet of the Southwest Quarter of the Southwest Quarter of Section 8, Township 40, Range 30, Morrison County, Minnesota.

The Mortgage was filed for record in the office of the County Recorder, in and for Morrison County, Minnesota.

7. The terms of Debtors' confirmed Chapter 13 plan (**Plan**) require Debtors to make post-petition Mortgage payments directly to Movant when due. Debtors are delinquent with respect to post-petition Mortgage payments for the months of July 2004 through October 2004 in a total amount of \$1,081.72, including late charges. Movant has also incurred attorney's fees and costs in the bringing of this motion.

8. Debtors' Four (4) month delinquency under the terms of the Mortgage constitute cause, within the meaning of 11 U.S.C. §362(d)(1), entitling Movant to relief from the automatic stay. Movant does not have, and has not been offered, adequate protection of its interest in the Property.

**WHEREFORE**, Movant, by its undersigned attorney, moves the Court for an order modifying the automatic stay of 11 U.S.C. §362(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as the Court may deem to be just, fair and equitable.

Dated this 4th day of October, 2004.

**PETERSON, FRAM AND BERGMAN**  
A Professional Association

BY: /e/ Michael T. Oberle  
**Michael T. Oberle**, Atty. Reg. #130126  
**Attorneys for Movant**  
Suite 300, 50 East Fifth Street  
St. Paul, Minnesota 55101-1197  
Telephone: (651) 291-8955

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re: **Bryan Sanford Engen and Jennine Marie Engen,**

**Debtors: Chapter 13 Case  
Case No. BKY 02-92798-GFK.**

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

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STATE OF WISCONSIN    )  
                                  ) ss.  
COUNTY OF MILWAUKEE    )

I, Shawn M. [Signature], your affiant, being first duly sworn on

oath, state as follows:

1. I am an employee of **Bank One, N.A. (Movant)**, and I have personal knowledge of the facts stated herein.

2. I make this Affidavit in support of a motion to lift, modify or condition the bankruptcy stay.

3. Debtors are the mortgagors on a mortgage dated April 8, 1999 which covers real property located in Morrison County and legally described as follows:

The West 150 feet of the East 525 feet of the South 300 feet of the Southwest Quarter of the Southwest Quarter of Section 8, Township 40, Range 30, Morrison County, Minnesota,

and which is commonly known as: 26182 Highway 27, Pierz, MN 56364. The mortgage was given to secure a promissory note. Copies of the note and the mortgage are attached hereto as Exhibit A and Exhibit B, respectively, and incorporated herein by this reference. The mortgage was assigned to Movant.

4. On or about September 27, 2002, Debtors filed a Petition under Chapter 13 of Title 11 U.S. Code in the United States Bankruptcy Court for the District of Minnesota.

5. Movant filed a Proof of Security Interest Claim with the Court on or about January 30, 2003.

6. Debtors' Chapter 13 Plan (**Plan**) provides that Debtors will maintain payments due during the pendency of this case and cure an existing default within a reasonable time.

7. Debtors have failed to make Four (4) payments, which were due during the pendency of this case, resulting in an arrearage of \$1,081.72, including late charges. Movant has also incurred attorney's fees and costs in the bringing of this motion.

8. I have read the Motion in this matter, and it is true to the best of my knowledge,  
information and belief.

9. Further, I saith not.

*[Handwritten signature]*  
\_\_\_\_\_

Subscribed and sworn to before me  
this 21<sup>st</sup> day of October, 2004.

*[Handwritten signature]*  
\_\_\_\_\_  
Notary Public



LN# 98-014791

NOTE

April 8, 1999

LAKE FOREST, CALIFORNIA  
[CITY] [STATE]

26182 HWY 27, PIERZ, MN 56364  
[PROPERTY ADDRESS]

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$ 22,200.00 (this amount will be called "principal"), plus interest, to the order of the Lender. The Lender is PACIFIC SHORE FUNDING, A CALIFORNIA CORPORATION I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note will be called the "Note Holder."

**2. INTEREST**

I will pay interest at a yearly rate of 11.375 %. Interest will be charged on unpaid principal until the full amount of principal has been paid.

**3. PAYMENTS**

I will pay principal and interest by making payments each month of U.S. \$ 257.58 . I will make my monthly payments on the 1ST day of each month beginning on June 1, 1999. I will make these payments every month until I have paid all of the principal and interest and any other charges, described below, that I may owe under this Note. If, on May 1, 2014 I still owe amounts under this Note, I will pay all those amounts, in full, on that date. I will make my monthly payments at 23101 LAKE CENTER DRIVE, #200 LAKE FOREST, CA 92630 or at a different place if required by the Note Holder.

**4. BORROWER'S FAILURE TO PAY AS REQUIRED**

**(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00 % of my overdue payment, but not less than U.S.\$ 5.00 and not more than U.S.\$ 12.88 . I will pay this late charge only once on each late payment.

**(B) Notice From Note Holder**

If I do not pay the full amount of each monthly payment on time, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date I will be in default. That date must be at least 30 days after the date on which the notice is mailed to me.

**(C) Default**

If I do not pay the overdue amount by the date stated in the notice described in (B) above, I will be in default. If I am in default, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount.

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

**(D) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back for all of its costs and expenses to the extent not prohibited by law. Those expenses include, for example, reasonable attorney's fees.

**5. THIS NOTE SECURED BY A MORTGAGE**

In addition to the protections given to the Note Holder under this Note, a Mortgage, dated the same day as this Note protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Mortgage describes how and under what conditions I may be required to make immediate payment in full of all amounts that I owe under this Note

**6. BORROWER'S PAYMENTS BEFORE THEY ARE DUE**

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in a letter that I am doing so. A prepayment of all of the unpaid principal is known as a "full prepayment." A prepayment of only part of the unpaid principal is known as a "partial prepayment."

I may make a full prepayment or a partial prepayment without paying any penalty. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no delays in the due dates or changes in the amounts of my monthly payments unless the Note Holder agrees in writing to those delays or changes. I may make a full prepayment at any time. If I choose to make a partial prepayment, the Note Holder may require me to make the prepayment on the same day that one of my monthly payments is due. The Note Holder may also require that the amount of my partial prepayment be equal to the amount of principal that would have been part of my next one or more monthly payments.

Borrower's Initials *BJE/gme*

**7. BORROWER'S WAIVERS**

I waive my rights to require the Note Holder to do certain things. Those things are: (A) to demand payment of amounts due (known as "presentment");(B) to give notice that amounts due have not been paid (known as "notice of dishonor");(C) to obtain an official certification of nonpayment (known as "protest"). Anyone else who agrees to keep the promises made in this Note, or who agrees to make payments to the Note Holder if I fail to keep my promises under this Note, or who signs this Note to transfer it to someone else also waives these rights. These persons are known as "guarantors, sureties and endorsers."

**8. GIVING OF NOTICES**

Any notice that must be given to me under this Note will be given by delivering it or mailing it by certified mail addressed to me at the Property Address above. A notice will be delivered or mailed to me at a different address if I give the Note Holder a notice of that different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it certified mail to the Note Holder at the address stated in Section 3 above. A notice will be mailed to the Note Holder at a different address if I am given notice of that different address.

**9. RESPONSIBILITY OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each of us is fully and personally obligated to pay the full amount owed and to keep all of the promises made in this Note. Any guarantor, surety, or endorser of this Note (as described in Section 7 above) is also obligated to do these things. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note. Any person who takes over my rights or obligations under this Note will have all of my rights and must keep all of my promises made in this Note. Any person who takes over the rights or obligations or a guarantor, surety, or endorser of this Note (as described in Section 7 above) is also obligated to keep all of the promises made in this Note.

**NOTICE TO BORROWER:** Do not sign this Note if it contains blank spaces. All spaces should be completed before you sign.

**BORROWER ACKNOWLEDGES PREPAYMENT RIDER ATTACHED HERETO AND MADE A PART HEREOF**

Bryan A. Engen  
BRYAN S. ENGEN

Jennine M. Engen  
JENNINE M. ENGEN

PACIFIC SHORE FUNDING  
23101 LAKE CENTER DR, #200  
LAKE FOREST, CA 92630  
LN# 98-014701

MORTGAGE

THIS MORTGAGE is made this day, **April 8, 1999** between the Mortgagor,  
**BRYAN S. ENGEN AND JENNINE M. ENGEN**

(herein "Borrower"), and the Mortgagee  
**PACIFIC SHORE FUNDING, A CALIFORNIA CORPORATION**  
a corporation organized and existing  
under the laws of **CALIFORNIA** whose address is  
**23101 LAKE CENTER DRIVE, #200, LAKE FOREST, CA 92630**

(herein "Lender").  
WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. \$ **22,200.00**  
which indebtedness is evidenced by Borrower's note dated **April 8, 1999** and extensions  
and renewals thereof (herein "Note"), providing for monthly installments of principal and interest, with the balance of  
the indebtedness, if not sooner paid, due and payable on **May 1, 2014**

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the  
payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this mortgage;  
and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage,  
grant and convey to Lender, with power of sale, the following described property located in the County of  
**MORRIS** State of Minnesota:

THIS INSTRUMENT IS FILED IN THE  
PUBLIC RECORDS OF THE COUNTY OF  
MORRIS

Borrower's Initials *JME BJE* Page 1 of 6

MINNESOTA - SECOND MORTGAGE - 1/80 - FNMA/FHLMC UNIFORM INSTRUMENT

FORM 3824

THE WEST 150 FEET OF THE EAST 525 FEET OF THE SOUTH 300 FEET OF THE SOUTHWEST 1/4 OF SOUTHWEST 1/4 OF SECTION 8, TOWNSHIP 40, RANGE 30, MORRIS COUNTY, MINNESOTA.

A.P. Number: 42 085 1

WHICH IS THE PROPERTY ADDRESS OF:

ADDRESS : 26181 HWY 27  
CITY : PIERZ  
STATE : MINNESOTA  
ZIP : 56364

(herein "Property Address")

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents, 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 leasehold estate if this Mortgage is on a leasehold), hereinafter referred to as the "Property";

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and that the Property is 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 records.

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

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note and late charges as provided in the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments of principal and interest are payable under the Note, until the Note is 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, plus one-twelfth of yearly premium installments for mortgage insurance, if any, 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.

Borrower's Initials JMC BLE Page 2 of 6

MINNESOTA - SECOND MORTGAGE - 1/80 - FNMA/FHL/MC UNIFORM INSTRUMENT

FORM 3824

COPIES OF THIS INSTRUMENT  
AND CORRECT COPY OF THE ORIGINAL

JMC BLE

20. Release. Upon payment of all sums secured by this Mortgage, Lender shall discharge this Mortgage without charge to Borrower. Borrower shall pay all costs of recording, if any.

21. Waiver of Homestead. Borrower hereby waives all right of homestead exemptions in the Property.

REQUEST FOR NOTICE OF DEFAULT  
AND FORECLOSURE UNDER SUPERIOR  
MORTGAGES OR DEEDS OF TRUST

Borrower and Lender 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, in any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

Bryan J. Engen  
BRYAN J. ENGEN

Jennine M. Engen  
JENNINE M. ENGEN

STATE OF MINNESOTA, \_\_\_\_\_ County ss:  
The foregoing instrument was acknowledged before me this day

\_\_\_\_\_ by \_\_\_\_\_

My Commission expires:  
(SEAL)

X \_\_\_\_\_  
Notary Public

This instrument was prepared by:

Name: WANDA STARK of PACIFIC SHORE FUNDING

Address: 23101 LAKE CENTER DRIVE, #200, LAKE FOREST, CA 92630

\_\_\_\_\_  
(Space Below This Line Reserved For Lender and Recorder)

THE ABOVE COPY INTO RECORD  
AND INDEXED BY THE  
JAB

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re: Bryan Sanford Engen and Jennine Marie  
Engen,

Debtors: Chapter 13 Case  
Case No. BKY 02-92798-GFK.

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**MEMORANDUM OF LAW**

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Bank One, N.A. (**Movant**) submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

**FACTS**

Movant holds a valid, duly perfected mortgage on certain real property owned by Debtors. Debtors' confirmed Chapter 13 Plan (**Plan**) requires Debtors to make post-petition mortgage payments directly to Movant, when due. Debtors are delinquent in respect to post-petition mortgage payments for the months of July 2004 through October 2004 in the amount of \$1,081.72.

**ARGUMENT**

Under §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). Debtors have failed to make the payments required by the terms of the Plan. Such a failure constitutes cause for

lifting the automatic stay pursuant to 11 U.S.C. §362(d)(1). First Federal Savings and Loan Association of Minneapolis v. Whitebread, 18 B.R. 192 (Bkrtcy. D. Minn. 1982). Furthermore, debtors have otherwise failed to provide Movant with adequate protection of its interest in the property.

Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay. In Re Tainan, 48 B.R. 250 (Bkrtcy E.D. Pa. 1985); In Re Quinlan, 12 B.R. 516 (Bkrtcy. W.D. Wis. 1981).

Accordingly, Movant is entitled to an order terminating the stay of 11 U.S.C. §362(a) and authorizing it to foreclose its mortgage on the property.

Dated this 4th day of November, 2004.

**PETERSON, FRAM AND BERGMAN**  
A Professional Association

BY: /e/ Michael T. Oberle  
Michael T. Oberle  
Atty. Reg. #130126

**Attorneys for Movant**  
Suite 300, 50 East Fifth Street  
St. Paul, Minnesota 55101  
Telephone: (651) 291-8955

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

---

**In Re: Bryan Sanford Engen and Jennine Marie  
Engen,**

**Debtors: Chapter 13 Case  
Case No. BKY 02-92798-GFK.**

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**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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I, Michael T. Oberle, employed by **PETERSON, FRAM AND BERGMAN, P.A.**, attorneys licensed to practice in this court, with an office at Suite 300, 50 East Fifth Street, St. Paul, MN, 55101, declare that on November 4, 2004 I served the annexed: a) Notice of Hearing and Motion for Relief from Stay, b) Affidavit in Support of Motion for Relief from Stay, c) Memorandum of Law, and d) proposed Order for Relief upon each of the parties listed below by mailing to each of them a copy of each thereof, enclosed in an envelope, first class postage prepaid, and by depositing same in the post office at St. Paul, Minnesota, directed to them at their last known addresses, as follows:

United States Trustee  
300 S 4th St # 1015  
Minneapolis MN 55415-1329

Stewart, Zlimen & Jungers, Ltd  
430 Oak Grove Street #200  
Minneapolis, MN 55403

Bryan Sanford Engen and  
Jennine Marie Engen  
26182 Highway 27  
Pierz, MN 56364

Jasmine Z. Keller  
Chapter 13 Trustee  
310 Plymouth Bldg.  
12 S 6th Street  
Minneapolis MN 55402

Wilford & Geske  
7650 Currell Blvd #300  
Woodbury, MN 55125

Daniel Rethmeier, Esq.  
P.O. Box 754  
St. Cloud, MN 56302

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

Signed: /e/ Michael T. Oberle

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:           **Bryan Sanford Engen and Jennine  
Marie Engen,**

**Debtors: Chapter 13 Case  
Case No. BKY 02-92798-GFK.**

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**ORDER FOR RELIEF FROM AUTOMATIC STAY**

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The above-entitled matter came before the Court on November 29, 2004, on the motion of Bank One, N.A. (**Movant**) seeking relief from the automatic stay of 11 U.S.C. §362(a). Based upon the statements of counsel and all of the files, records and proceedings herein, the Court now finds that cause exists entitling Movant to the requested relief.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that the automatic stay of 11 U.S.C. §362(a) is immediately terminated as to Movant; and, Movant, its successors or assigns, are hereby authorized to foreclose pursuant to Minnesota law that certain Mortgage dated April 8, 1999, filed for record in the office of the County Recorder in and for Morrison County, Minnesota, on , and recorded as Document No. and covering real property located in Morrison County, Minnesota, which is legally described as follows:

The West 150 feet of the East 525 feet of the South 300 feet of the Southwest Quarter of the Southwest Quarter of Section 8, Township 40, Range 30, Morrison County, Minnesota.

Notwithstanding Fed. R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2004.

---

Gregory F. Kishel  
United States Bankruptcy Judge