DELAWARE COUNTY IOWA
FILED
2004 JUL 28 AM 8:
BOOK 2004 PAGE 2810
DEBORAH L. PEYTON
DELAWARE CO RECORDER
17.00

Preparer Information (x) ENW

Eagle Valley Bank/C. Stewart	3000 County Road 42 W.	Burnsville, MN	952 736-7775
Individual's Name	Address	City	Phone

SPACE ABOVE THIS LINE FOR RECORDER

REAL ESTATE MORTGAGE

(For Consumer or Business Mortgage Transactions)

Brent A. Johnson Family Limited Partnership

("Mortgagor," whether one or more) mortgages, conveys and warrants to Eagle Valley Bank, N.A., 3000 County Road 42 W., Burnsville, MN 55337 ("Lender") in consideration of the sum of TWO HUNDRED FORTY THOUSAND AND NO/100

Dollars ($ 240,000.00), loaned or to be loaned to Crescendo Business Service, LLC

("Borrower," whether one or more), evidenced by Borrower's note(s) or agreement dated June 21, 2004

2003-3542

the real estate described below, together with all privileges, hereditaments, easements and appurtenances, all rents, leases, issues and profits, all claims, awards and payments made as a result of the exercise of the right of eminent domain, and all existing and future improvements and fixtures (all called the "Property") to secure the Obligations described in paragraph 4, including but not limited to repayment of the sum stated above plus certain future advances made by Lender.

NOTICE: This Mortgage secures credit in the amount of $ 240,000.00 .
Loans and advances up to this amount, together with interest, are senior to indebtedness to other creditors under subsequently recorded or filed mortgages and liens.

1. Description of Property. This Property is (is) not (is not) the homestead of Mortgagor, which shall be liable for the Obligations.

Lot Six (6) of Friedlein Subdivision, a subdivision of Lot Four (4) except the East Two hundred (200) feet therof, of West Commercial Subdivision of part of the Northwest Quarter of the Northeast Quarter (NW1/4-NE1/4) of Section Thirty-one (31), Township Eighty-nine (89) North, Range Five (5) West of the Fifth Principal Meridan, in the City of Manchester, Delaware County Iowa, according to plat recorded in Book 8 Plats, Page 147.

☐ If checked here, description continues or appears on attached sheet.
☐ If checked here, this is a "purchase money" mortgage as defined in the Iowa Code.
☐ If checked here, this Property is the residence of Mortgagor and is a one-family or two-family dwelling.
☐ If checked here, this Mortgage is a "construction mortgage" as defined in the Iowa Code and constitutes a "construction mortgage lien" as defined in the Iowa Code.
☐ If checked here, Condominium Rider is attached.
If checked here, ☐ this Property is agricultural property as defined in the Iowa Code, ☐ agricultural land used for farming as defined in the Iowa Code or ☐ used for an agricultural purpose as defined in the Iowa Code.

2. Title. Mortgagor warrants title to the Property, subject only to restrictions and easements of record, municipal and zoning ordinances, current taxes and assessments not yet due and n/a

3. Escrow. Interest will not (will) (will not) be paid on escrowed funds if an escrow is required under paragraph 7(a) on the reverse side.

4. Mortgage as Security. This Mortgage secures prompt payment to Lender of (a) the sum stated in the first unnumbered paragraph of this Mortgage, plus interest and charges according to the terms of the promissory notes or agreement of Borrower to Lender identified in the first unnumbered paragraph, and any extensions, renewals or modifications signed by any Borrower of such promissory notes or agreement, (b) to the extent not prohibited by the Iowa Consumer Credit Code (i) any additional sums which are in the future loaned by Lender to any Mortgagor, to any Mortgagor and another or to another guaranteed or endorsed by any Mortgagor primarily for personal, family or household purposes and agreed in documents evidencing the transaction to be secured by this Mortgage, and (ii) all other additional sums which are in the future loaned by Lender to any Mortgagor, to any Mortgagor and another or to another guaranteed or endorsed by any Mortgagor, (c) all interest and charges, and (d) to the extent not prohibited by law, all costs and expenses of collection or enforcement (all called the "Obligations"). This Mortgage also secures the performance of all covenants, conditions and agreements contained in this Mortgage. Unless otherwise required by law, Lender will satisfy this Mortgage upon request by Mortgagor if (a) the Obligations have been paid according to their terms, (b) any commitment to make future advances secured by this Mortgage has terminated, (c) Lender has terminated any line of credit under which advances are to be secured by this Mortgage, and (d) all other payments required under this Mortgage and the Obligations and all other terms, conditions, covenants, and agreements contained in this Mortgage and the documents evidencing the Obligations have been paid and performed.

5. Taxes. To the extent not paid to Lender under paragraph 7(a), Mortgagor shall pay before they become delinquent, without notice or demand, all taxes, assessments and other charges which may be levied or assessed against the Property, or against Lender upon this Mortgage or the Obligations or other debt secured by this Mortgage, upon Lender's interest in the Property, and deliver to Lender receipts showing timely payment.

6. Insurance. Mortgagor shall keep the improvements on the Property insured against direct loss or damage occasioned by fire, flood, extended coverage perils and such other hazards as Lender may require, through insurers approved by Lender, in amounts, without co-insurance, not less than the unpaid balance of the Obligations or the full replacement value, whichever is less, and shall pay the premiums when due. The policies shall contain the standard mortgage clause in favor of Lender and, unless Lender otherwise agrees in writing, the original of all policies covering the Property shall be deposited with Lender. Subject to Lender's approval, Borrower is free to select the insurance agent or insurer through which insurance is obtained. Mortgagor shall promptly give notice of loss to insurance companies and Lender. All proceeds from such insurance shall be applied, at Lender's option, to the installments of the Obligations in the inverse order of their maturities (without penalty for prepayment) or to the restoration of the improvements on the Property. In the event of foreclosure of this Mortgage or other transfer of title to the Property, in extinguishment of the indebtedness secured hereby, all right, title, and interest of Mortgagor in and to any insurance then in force shall pass to the purchaser or grantee. If Mortgagor fails to keep any required insurance on the Property, Lender may purchase such insurance for Mortgagor, such insurance may be acquired by Lender solely to protect the interests of Lender (and will not cover Mortgagor's equity in the Property), and Mortgagor's obligation to repay Lender shall be in accordance with paragraph 9.

7. Mortgagor's Covenants. Mortgagor covenants:

(a) **Escrow.** If an escrow is required by Lender, to pay Lender sufficient funds, at such times as Lender designates, to pay when due (1) the estimated annual real estate taxes and assessments on the Property, (2) all property and hazard insurance premiums, (3) flood insurance premiums, if any, (4) if payments owed under the Obligations are guaranteed by mortgage guaranty insurance, the premiums necessary to pay for such insurance, and (5) other items agreed to be included in the escrow. Lender may, at any time, collect and hold such escrow funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Mortgagor's escrow account under the federal Real Estate Settlement Procedures Act of 1974, as amended from time to time. Lender may estimate the amount of escrow funds due on the basis of current data and reasonable estimates of future expenditures of future escrow account funds or as otherwise required by applicable law. Lender shall apply the escrowed funds against taxes, assessments and insurance premiums when due or as otherwise required by law. Escrowed funds may be commingled with Lender's general funds. If the escrowed funds held by Lender exceed the amount permitted to be held by applicable law, Lender shall account to Mortgagor for the excess escrowed funds in a manner determined by Lender or as otherwise required by applicable law. If the escrowed funds held by Lender at any time are not sufficient to pay the escrow account items when due, Lender may notify Mortgagor in writing, and Mortgagor shall pay to Lender the amount necessary to make up the deficiency in a manner determined by Lender or as otherwise required by applicable law;

(b) **Condition and Repair.** To keep the Property in good and tenantable condition and repair, and to restore or replace damaged or destroyed improvements and fixtures;

(c) **Liens.** To keep the Property free from liens and encumbrances superior to the lien of this Mortgage and not described in paragraph 2;

(d) **Other Mortgages.** To perform all of Mortgagor's obligations and duties under any other mortgage or security agreement on the Property and any obligation to pay secured by such a mortgage or security agreement;

(e) **Waste.** Not to commit waste or permit waste to be committed upon the Property;

(f) **Conveyance.** Not to sell, assign, lease, mortgage, convey or otherwise transfer any legal or equitable interest in all or part of the Property, or permit the same to occur without the prior written consent of Lender and, without notice to Mortgagor, Lender may deal with any transferee as to his interest in the same manner as with Mortgagor, without in any way discharging the liability of Mortgagor under this Mortgage or the Obligations;

(g) **Alteration or Removal.** Not to remove, demolish or materially alter any part of the Property, without Lender's prior written consent, except Mortgagor may remove a fixture, provided the fixture is promptly replaced with another fixture of at least equal utility;

(h) **Condemnation.** To pay to Lender all compensation received for the taking of the Property, or any part, by condemnation proceeding (including payments in compromise of condemnation proceedings), and all compensation received as damages for injury to the Property, or any part. The compensation shall be applied in such manner as Lender determines to rebuilding of the Property or to the Obligations in the inverse order of their maturities (without penalty for prepayment);

(i) **Inspection.** Lender and its authorized representatives may enter the Property at reasonable times to inspect it, and at Lender's option to repair or restore the Property and to conduct environmental assessments and audits of the Property;

(j) **Ordinances.** To comply with all laws, ordinances and regulations affecting the Property; and

(k) **Subrogation.** That Lender is subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the proceeds of the note(s) or agreement identified on the reverse side.

8. Environmental Laws. Mortgagor represents, warrants and covenants to Lender (a) that during the period of Mortgagor's ownership or use of the Property no substance has been, is or will be present, used, stored, deposited, treated, recycled or disposed of on, under, in or about the Property in a form, quantity or manner which if known to be present on, under, in or about the Property would require clean-up, removal or some other remedial action ("Hazardous Substance") under any federal, state or local laws, regulations, ordinances, codes or rules ("Environmental Laws"); (b) that Mortgagor has no knowledge, after due inquiry, of any prior use or existence of any Hazardous Substance on the Property by any prior owner of or person using the Property; (c) that, without limiting the generality of the foregoing, Mortgagor has no knowledge, after due inquiry, that the Property contains asbestos, polychlorinated biphenyl components (PCBs) or underground storage tanks; (d) that there are no conditions existing currently or likely to exist during the term of this Mortgage which would subject Mortgagor to any damages, penalties, injunctive relief or clean-up costs in any governmental or regulatory action or third-party claims relating to any Hazardous Substance; (e) that Mortgagor is not subject to any court or administrative proceeding, judgment, decree, order or citation relating to any Hazardous Substance; and (f) that Mortgagor in the past has been, at the present is, and in the future will remain in compliance with all Environmental Laws. Mortgagor shall indemnify and hold harmless Lender, its directors, officers, employees and agents from all loss, cost (including reasonable attorneys' fees and legal expenses), liability and damage whatsoever directly or indirectly resulting from, arising out of, or based upon (i) the presence, use, storage, deposit, treatment, recycling or disposal, at any time, of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, (ii) the violation or alleged violation of any Environmental Law, permit, judgment or license relating to the presence, use, storage, deposit, treatment, recycling or disposal or any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, or (iii) the imposition of any governmental lien for the recovery of environmental clean-up costs expended under any Environmental Law. Mortgagor shall immediately notify Lender in writing of any governmental or regulatory action or third-party claim instituted or threatened in connection with any Hazardous Substance on, in, under or about the Property.

9. Authority of Lender to Perform for Mortgagor. If Mortgagor fails to perform any of Mortgagor's duties set forth in this Mortgage, Lender may after giving Mortgagor any notice and opportunity to perform which are required by law, perform the duties or cause them to be performed, including without limitation signing Mortgagor's name or paying any amount so required, and the cost shall be due on demand and secured by this Mortgage, bearing interest at the highest rate stated in any document evidencing an Obligation, but not in excess of the maximum rate permitted by law, from the date of expenditure by Lender to the date of payment by Mortgagor.

10. Default; Acceleration; Remedies. If this transaction is governed by the Iowa Consumer Credit Code, then a default occurs if, without justification under any law: (a) Mortgagor fails to make a payment within ten days after payment is due under any of the Obligations; or (b) Mortgagor fails to observe any other covenant or duty contained in this Mortgage, breach of which materially impairs the condition, value or protection of or Lender's right in the Property or materially impairs the Mortgagor's prospect to pay amounts due under any Obligation secured by this Mortgage. If this transaction is not governed by the Iowa Consumer Credit Code, then a default occurs if, (a) there is a default under any Obligation secured by this Mortgage, or (b) Mortgagor fails timely to observe or perform any of Mortgagor's covenants or duties contained in this Mortgage. Upon the occurrence of a default, at the option of Lender, each Obligation will become immediately payable unless notice to Mortgagor or Borrower and an opportunity to cure are required by applicable law, or the document evidencing the Obligation and, in that event, the Obligation will become payable if the default is not cured as provided in that statute or the document evidencing the Obligation or as otherwise provided by law. If Lender exercises its option to accelerate, the unpaid principal and interest owed on the Obligation, together with all sums paid by Lender as authorized or required under this Mortgage or any Obligation, shall be collectible in a suit at law or by foreclosure of this Mortgage by action, or both, or by the exercise of any other remedy available at law or equity, including the exercise of a nonjudicial voluntary foreclosure.

11. Redemption. It is agreed that if this Mortgage covers less than ten (10) acres of land, and in the event of the foreclosure of this Mortgage and sale of the Property by sheriff's sale in such foreclosure proceedings, the time of one year for redemption from said sale provided by the statutes of the State of Iowa shall be reduced to six (6) months provided the Lender, in such action files an election to waive any deficiency judgement against Mortgagor which may arise out of the foreclosure proceedings: all to be consistent with the provisions of Chapter 628 of the Iowa Code. If the redemption period is so reduced, for the first three (3) months after sale such right of redemption shall be exclusive to the Mortgagor, and the time periods in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to four (4) months.

It is further agreed that the period of redemption after a foreclosure of this Mortgage shall be reduced to sixty (60) days if all of the three (3) following contingencies develop: (1) The real estate is less than ten (10) acres in size; (2) the court finds affirmatively that the said real estate has been abandoned by the owners and those persons personally liable under this Mortgage at the time of such foreclosure; and (3) Lender in such action files and election to waive any deficiency judgement against Mortgagor or Mortgagor's successors in interest in such action. If the redemption period is so reduced, Mortgagor or Mortgagor's successors in interest or the owner shall have the exclusive right to redeem for the first thirty (30) days such sale, and the time provided for redemption by creditors as provided in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to forty (40) days. Entry of appearance by pleading or docket entry by or on behalf of Mortgagor shall be a presumption that the Property is not abandoned. Any such redemption period shall be consistent with all of the provisions of Chapter 628 of the Iowa Code as now enacted or hereafter amended or replaced. This paragraph shall not be construed to limit or otherwise affect any other redemption provisions contained in Chapter 628 of the Iowa Code, nor shall this paragraph preclude Lender from electing foreclosure without redemption under Iowa Code Section 654.20.

12. Waiver. Lender may waive any default without waiving any other subsequent or prior default by Mortgagor.

13. Power of Sale. In the event of judicial foreclosure, Lender may sell the Property at public sale and execute and deliver to the purchasers deeds of conveyance pursuant to statute.

14. Assignment of Rents and Leases. The lien on the rents herein granted is not a pledge of rents but is a grant of a lien and security interest in all rents, leases, issues and profits, now or hereafter arising, from the ownership, occupancy or use of the Property and is primary security for the Obligations and shall be effective from the date hereof and not just in the event of default. Mortgagor assigns and transfers to Lender, as additional security for the Obligations, all rents which become or remain due or are paid under any agreement or lease for the use or occupancy of any part or all of the Property. Until the occurrence of an event of default under this Mortgage or any Obligation, Mortgagor has the right to collect the rents, issues and profits from the Property, but upon the occurrence of such an event of default, and the giving of notice by Lender to Mortgagor declaring that constructive possession of the Property is in Lender, Mortgagor's license to collect is terminated and Lender shall be entitled to such rents, issues and profits and may, after giving Mortgagor any notice and opportunity to perform required by law, notify any or all tenants to pay all such rents directly to Lender. All such payments shall be applied in such manner as Lender determines to payments required under this Mortgage and the Obligations. This assignment shall be enforceable and Lender shall be entitled to take any action to enforce the assignment (including notice to the tenants to pay directly to Lender or the commencement of a foreclosure action) without seeking or obtaining the appointment of a receiver or possession of the Property.

15. Receiver. Upon the commencement or during the pendency of an action or proceeding, judicial or nonjudicial, to foreclose this Mortgage, through and including the period of redemption, or enforce any other remedies of Lender under it, without regard to the adequacy or inadequacy of the Property as security for the Obligations, Mortgagor agrees that the court may appoint a receiver of the Property (including homestead interest) without bond, and may empower the receiver to take possession of the Property and collect the rents, issues and profits of the Property and exercise such other powers as the court may grant until the confirmation of sale, and may order the rents, issues and profits, when so collected, to be held and applied as the court may direct. Mortgagor hereby waives Mortgagor's right to possession, statutory or otherwise, at any time after commencement of foreclosure, and further waives the right to challenge the appointment of a receiver of the Property.

16. Expenses. To the extent not prohibited by law, Mortgagor shall pay all reasonable costs and expenses before and after judgment, including without limitation, attorneys' fees, fees and expenses for environmental assessments, inspections and audits, and fees and expenses for obtaining title evidence incurred by Lender in protecting or enforcing its rights under this Mortgage.

17. Severability. Invalidity or unenforceability of any provision of this Mortgage shall not affect the validity or enforceability of any other provision.

18. Successors and Assigns. The obligations of all Mortgagors are joint and several. This Mortgage benefits Lender, its successors and assigns, and binds Mortgagor(s) and their respective heirs, personal representatives, successors and assigns.

19. Entire Agreement. This Mortgage is intended by the Mortgagor and Lender as a final expression of this Mortgage and as a complete and exclusive statement of its terms, there being no conditions to the full effectiveness of this Mortgage. No parol evidence of any nature shall be used to supplement or modify any terms.

20. Release of Rights of Dower, Homestead and Distributive Share. Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the Property and waives all rights of exemption as to any of the Property.

The undersigned acknowledges receipt of an exact copy of this Mortgage.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

NOTICE TO CONSUMER IN A TRANSACTION GOVERNED BY THE IOWA CONSUMER CREDIT CODE

NOTICE TO CONSUMER: 1. Do not sign this paper before you read it. 2. You are entitled to a copy of this paper. 3. You may prepay the unpaid balance at any time without penalty and may be entitled to a refund of unearned charges in accordance with law.

Signed JUNE 21, 2004 (Date)

_____ (SEAL)

_____ (Type of Organization)

By: _____ (SEAL) Brent A. Johnson _____ (SEAL)

By: _____ (SEAL) _____ (SEAL)

By: _____ (SEAL) _____ (SEAL)

By: _____ (SEAL) _____ (SEAL)

I UNDERSTAND THAT HOMESTEAD PROPERTY IS IN MANY CASES PROTECTED FROM THE CLAIMS OF CREDITORS AND EXEMPT FROM JUDICIAL SALE, AND THAT BY SIGNING THIS MORTGAGE, I VOLUNTARILY GIVE UP MY RIGHT TO THIS PROTECTION FOR THIS PROPERTY WITH RESPECT TO CLAIMS BASED UPON THIS MORTGAGE.

Dated _____ _____

Dated _____ _____

Dated _____ _____

Dated _____ _____

INDIVIDUAL ACKNOWLEDGMENT

STATE OF IOWA)
) ss:
COUNTY OF)

On this 21ST day of JUNE, 2004, before me the undersigned, a Notary Public in and for said State, personally appeared Brent A. Johnson, to me known to be the person(s) named in and who executed the forgoing instrument, and acknowledged that they/he/she executed the same as their/his/her voluntary act and deed.

MIMI B. HUA
Notary Public
Minnesota
My Commission Expires Jan 31, 2005

* _____, Notary Public
in and for the State of Iowa

ENTITY ACKNOWLEDGMENT

STATE OF IOWA)
) ss:
COUNTY OF)

On this ____ day of _____, before me the undersigned, a Notary Public in and for said State, personally appeared _____, to me personally known, who being by me duly sworn, did say that that person(s) is the _____ of said _____ that said instrument was signed on behalf of said _____ by authority of _____ and that the said _____ acknowledged the execution of said instrument to be the voluntary act and deed of said _____ by it and by them voluntarily executed.

* _____, Notary Public
in and for the State of Iowa

*Type or print name signed above.

Return Name and Address:
Eagle Valley Bank, N.A.
PO Box 1173
Burnsville, MN 55337

©Wisconsin Bankers Association 1999
FIPCO