

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Fenton Sub Parcel A, LLC
Debtor.

Case No. BKY 12-42768
Chapter 11 Case

Bowles Sub Parcel A, LLC
Debtor.

Case No. BKY 12-42765
Chapter 11 Case

**NOTICE OF HEARING AND MOTION FOR ORDER AUTHORIZING USE OF
CASH COLLATERAL ON A FINAL BASIS**

TO: The Parties Specified in Local Rule 9013-3(a)(2).

1. Fenton Sub Parcel A, LLC and Bowles Sub Parcel A, LLC, (“Debtors”) move the Court for the relief requested below and give notice of a hearing.

2. The Court will hold a hearing on this motion at **2:00 p.m.** on **March 20, 2013** in Courtroom 8 West, United States Courthouse, 300 South Fourth Street, Minneapolis, MN 55415.

3. Pursuant to Local Rule 9006-1(c), any response to this motion must be served and filed not later than **March 15, 2013** which is five (5) days before the time set for the hearing (including Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION FOR FINAL ORDER IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005, and Local Rule 1070-1. This is a core proceeding. The petitions commencing these chapter 11 cases were filed on May 8, 2012 (the “Filing Date”). The cases are now pending in this Court.

5. This Motion arises under 11 U.S.C. §§ 105 and 363 and Fed. R. Bankr. P. 4001(b). This Motion is filed under Fed. R. Bankr. P. 9014 and 4001 and Local Rules 4001-2 and 9013-1 through 9013-3.

RULE 4001 STATEMENT

6. Pursuant to Fed. R. Bankr. P. 4001(b)(1)(B), Debtors request an order authorizing use of cash collateral consisting of rents in which Wells Fargo Bank, N.A., as trustee for the registered holder of J.P. Morgan Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2004-LN2 (the “Lender”) holds a security interest. Debtors will use the cash collateral to continue their operations and to either reorganize or pursue an asset sale. Debtors request final authorization to use cash collateral through April 30, 2013. The Lender is adequately protected by the equity cushion in the real property, as well as the Debtors’ continued maintenance of the property.

7. Pursuant to Local Rule 4001-2(a), a verified statement in support of this Motion is attached hereto as Exhibit A setting forth the Debtors’ calculation of the amount of debt secured by the collateral; the Debtors’ description of the collateral and estimate of the collateral's value on the date of the filing of the petition and at the beginning of the period of time for which the Debtors currently seek authorization to use cash collateral; and the Debtors’ description of the collateral and estimate of the collateral's value at the end of the period of time for which the Debtors’ currently seek authorization to use cash collateral. Debtors believe that market conditions are improving and that the value is no less than previously stated in their May 2012 Exhibit A. The Debtors’ cash flow projections are separately attached as Exhibit D.

BACKGROUND

8. On the Filing Date, Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

9. An Order was signed on September 6, 2012 [Docket No. 44] allowing the Debtors' continued use of cash collateral until November 30, 2012, unless and until earlier entry of an order by the Court authorizing the continuing use of cash collateral.

10. Debtors have continued in possession of their assets and the management of their business as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, and with the consent of the Lender. Confirmation of the Debtors' plan of reorganization is presently scheduled for March 22, 2013.

I. GENERAL BACKGROUND OF THE DEBTORS.

11. Both Debtors are Delaware limited liability companies formed in April 2004. Both Debtors are ultimately controlled by StoneArch II/WCSE Minneapolis Industrial LLC ("StoneArch"). StoneArch is the 100% member of Bowles Subsidiary, LLC and of Fenton Subsidiary, LLC. Bowles Subsidiary, LLC is then the 100% member of Bowles Sub Parcel A, LLC and Fenton Subsidiary, LLC is the 100% member of Fenton Sub Parcel A, LLC. This ownership structure is illustrated on the chart attached as Exhibit B.

12. In 2007, StoneArch acquired various LLCs, which in turn owned 27 industrial multi-tenant properties located in the Twin Cities. The properties were divided into four separate pools: A, B, C, and D. The Debtors jointly own the properties in pool A (the "Pool A Properties"). Specifically, as tenants in common, Fenton Sub Parcel A, LLC has an undivided 74.5394% interest and Bowles Sub Parcel A, LLC has an undivided 25.4606% interest.

Although they are two separate legal entities, the Debtors have consistently been treated as one enterprise.

13. The Pool A Properties consist of six parcels of real property located in Dakota County, Minnesota. The buildings consist of office or warehouse space, and do not include any residential space. The Debtors rent space in the six buildings to a variety of business tenants. The Pool A Properties have a combined total of approximately 28 tenants, ranging from Accountants to Manufacturers.

14. The only source of revenue for the Debtors is rents received from tenants. The Pool A Properties currently have an average occupancy rate of approximately 72%, and the Debtors receive an average of approximately \$124,000 per month in total income.

15. Hoyt Properties, Inc. (“Hoyt Properties”) acts as the Debtors’ agent in managing the Pool A Properties. Hoyt Properties enters into contracts with vendors for the provision of services – such as sprinkler systems and window cleaning – to the Pool A Properties. All of the vendors or other creditors who supply goods or services to the Pool A Properties bill Hoyt Properties, which then pays the bills out of a checking account held by Hoyt Properties for the benefit of the Debtors.

II. THE DEBTORS’ DEBT STRUCTURE.

A. First Mortgage Debt.

16. The 2007 purchase was structured utilizing: (i) the assumption of pre-existing mortgage debt; (ii) preferred equity provided by WCHYP II Lender LLC and Wrightwood Capital Strategic Equity Fund I LP (together “Wrightwood”), which together owned the

preferred membership units in WCSE Minneapolis Industrial Investor LLC; and (iii) equity provided by a group of individual investors who are members of StoneArch II, LLC.¹

17. With respect to the Pool A Properties, the original financing was provided by Nomura Credit and Capital, Inc. (“Nomura”) (“First Mortgage Debt”) in the amount of \$10,632,000. Pursuant to an Amended and Restated Promissory Note dated April 12, 2007 (the “Note”), Debtors assumed the First Mortgage Debt. The Debtors currently owe approximately \$8,696,878 under the Note, which matures on May 11, 2014. The principal on the First Mortgage Debt has been paid down by over \$1 million to date.

18. The First Mortgage Debt is secured by a first priority mortgage on all of the Pool A Properties pursuant to an Amended and Restated Mortgage and Security Agreement dated April 12, 2004 (the “Mortgage”), which the Debtors assumed. Because the Mortgage is cross-collateralized by all six Pool A Properties, properties within Pool A may not be sold individually. However, all of the Pool A Properties may be sold at one time and the Mortgage allows the sale and assumption of the First Mortgage Debt by a purchaser.

19. The First Mortgage Debt is also secured by an assignment of leases and rents (the “Assignment of Leases”). In addition, pursuant to a Cash Management Agreement dated April 12, 2004, portions of the Debtors’ monthly debt service payments are placed into an escrow account for taxes and insurance, as well as the following separate reserve accounts: tenant improvements and leasing commissions (TI/LC) reserve, repair reserve, and debt service reserve (collectively, the “Reserve Accounts”).

20. On or around August 20, 2004, Nomura endorsed the promissory note and assigned the Mortgage and the Assignment of Leases to Wells Fargo Bank, N.A. as trustee for

¹ All of Wrightwoods’ interests in WCSE Minneapolis Industrial Investor LLC, which holds 71.8% of the membership interest in StoneArch, were purchased by Steven B. Hoyt (“Mr. Hoyt”) on March 31, 2008 with a credit facility provided by Commerce Bank.

the registered holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2004-LN2 (the “Lender”). Berkadia Commercial Mortgage LLC was chosen to be the servicer of the First Mortgage Debt. In approximately November 2010, CWC Capital Asset Management LLC began acting as the special servicer (the “Special Servicer”).

21. The Debtors were current with all payment obligations to Lender on the First Mortgage Debt through and including the month of February 2012. No further payments have been made.

B. The Hoyt Loan Indebtedness.

22. Following the acquisition of the Pool A Properties and assumption of the Note and Mortgage, the Debtors have periodically required additional funds for various needs such as capital expenditures, tenant improvements, and leasing commissions. Mr. Hoyt, as an individual with indirect ownership of a portion of the Debtors, has loaned such needed funds to the Debtors – and to the owners of the pools B, C and D properties – in a total amount of approximately \$3,466,788 (the “Hoyt Loan Indebtedness”).

23. The Debtors’ filings were necessitated by the acceleration of the debt and threatened foreclosure on the Pool A Properties. The Debtors believe that a chapter 11 bankruptcy will provide the needed breathing room and structure to propose and confirm a chapter 11 plan of reorganization including among other things defeasance or sales of some or all of the Pool A Properties with sufficient proceeds to pay the First Mortgage Debt and all other valid claims.

PREPETITION SECURED DEBT STRUCTURE

24. The Debtors' indebtedness to Lender on the First Mortgage Debt and the Lender's security for the First Mortgage Debt are described in detail above.

25. The Lender appears to have perfected its interest in the Mortgage, Assignment of Leases, and other assets of the Debtors by causing the documents to be recorded in Minnesota as set forth on the chart attached as Exhibit C, and by causing an original financing statement to be filed with the Delaware Secretary of State as Document No. 41129297 on April 22, 2004 and subsequent Document No. 2008 3937743 on November 13, 2008. As noted above, the current unpaid balance of the First Mortgage Debt is approximately \$8,696,878.

COLLATERAL VALUE

26. As noted above, the Pool A Properties have an average occupancy rate of approximately 72%. With that occupancy rate, the Pool A Properties achieve an average monthly rental income of approximately \$124,000. A valuation of the Pool A properties was performed on December 1, 2011, by Mr. Herb Tousley and Mr. Steven Hoyt utilizing data inputs from Shenhon Company as of August 1, 2011, and assumptions consistent with market conditions, calculated using Argus software. That valuation was \$11,320,485 as of December 1, 2011, and Debtor believes it to be the same today. In today's market, Debtors value the Pool A Properties by using an estimation based on the stabilized rental income of the Pool A Properties multiplied by a 9.5% capitalization rate on the rental income, which results in the Pool A Properties being worth approximately \$11,320,485 as of the Filing Date. The estimated value of each Pool A Property is set forth on the attached as Exhibit A.

27. In addition, the Lender holds a security interest in other assets of the Debtors, including funds from rent payments, security deposits, deposits to utilities, the Reserve

Accounts, and accounts receivable of the Debtors. The estimated value of this collateral is set forth in Exhibit A, and together with the Pool A Properties, exceeds \$11 million.

28. Based on the above-described figures and the amounts set forth on the attached exhibits, Debtors believe that Lender has an equity cushion of approximately 30% in its collateral as of the Filing Date.

CASH NEEDS

29. Debtors seek authorization to use the cash collateral consisting of rents existing as of the Filing Date, and future rents in which the Lender claims an interest, in order to pay expenses in accordance with the cash flow projections and budget attached as Exhibit D (the "Budget"). Debtors seek use of cash collateral going through April 30, 2013, although the Debtors anticipate obtaining confirmation of a Chapter 11 plan prior to that date. Debtors must have access to the rents to pay normal and customary operating expenses such as utilities, vendors, other service providers, and taxes and insurance, as well as the costs of administration of the bankruptcy case such as professional fees and U.S. Trustee fees.

30. Debtors will generate cash from collection of rents from tenants and such cash will be used to maintain the real estate for the benefit of the Lender and tenants. As set forth in the Budget, Debtors project that such rents will be sufficient to fund its chapter 11 administrative expenses, including postpetition operating expenses.

ADEQUATE PROTECTION

31. To adequately protect the Lender's interests, Debtors note that Lender has a continuing security interest in all post-petition rents pursuant to section 552 of the Bankruptcy Code. Debtors intend to use such rents to maintain the property, which in itself is a form of adequate protection, and to generate the right to receive subsequent rents from the tenants as well

as to seek new tenants or replacement tenants. Debtors will also use the rent proceeds to pay post-petition expenses such as real estate taxes as they come due. Such taxes, if unpaid, would otherwise have priority over the lien of the Lender.

32. As additional adequate protection, the Lender has an equity cushion in its collateral of approximately 30% as of the Filing Date.

33. Prior to the hearing on this Motion, Debtors may enter into a stipulation or agreed order with the Lender concerning use of cash collateral, adequate protection, and other related matters. In the event Debtors enter into any such stipulation, they will seek approval of the stipulation without further notice or hearing pursuant to Bankruptcy Rule 4001(d)(4), and **DEBTORS HEREBY GIVE NOTICE OF INTENT TO SEEK APPROVAL OF ANY SUCH STIPULATION OR AGREED ORDER.**

34. Pursuant to Local Rule 9013-2(a), this Motion is verified and is accompanied by a Memorandum, Proposed Order and certificate of service.

35. Pursuant to Local Rule 9013-2(c), Debtors give notice that they may, if an evidentiary hearing is required, call Steven B. Hoyt, the Chief Manager of both Debtors, to testify at the hearing on the motion. The business address of the proposed witness is 275 Market Street, Suite 439, Minneapolis, MN 55405. The Debtors also cross-designate any witnesses identified in the filings of any party-in-interest objecting to the motion.

WHEREFORE, Debtors move the Court for an order granting:

- (a) Their Motion for a final order authorizing final use of cash collateral through April 30, 2013; and
- (b) Such other and further relief as the Court deems just and equitable.

Dated: March 6, 2013

LAPP, LIBRA, THOMSON,
STOEBNER & PUSCH, CHARTERED

/e/Ralph V. Mitchell
Ralph V. Mitchell (#184639)
120 South Sixth Street, Suite 2500
Minneapolis, MN 55402
(612) 338-5815

ATTORNEYS FOR DEBTORS

VERIFICATION

I, Steven B. Hoyt, am the Chief Manager of both of the Debtors. I declare under penalty of perjury that the facts set forth in the preceding Motion are true and correct to the best of my knowledge, information and belief.

Dated: 3-5, 2013

Signed: 
Steven B. Hoyt

EXHIBIT A

**FENTON SUB PARCEL A, LLC and BOWLES SUB PARCEL A, LLC
COLLATERAL VALUE PROJECTION**

DEBT	COLLATERAL	VALUE OF COLLATERAL (as of Petition Date)	ANTICIPATED VALUE OF COLLATERAL (as of March 1, 2013)
First Mortgage Debt with outstanding balance of approximately \$8,696,878	PROFESSIONAL PLAZA I 1601 East Highway 13, Burnsville, MN	\$ 2,560,932.00	\$ 2,560,932.00
	PROFESSIONAL PLAZA II 1501-1525 East Highway 13, Burnsville, MN	\$ 2,473,628.00	\$ 2,473,628.00
	PROFESSIONAL PLAZA III 1500-1526 East 122nd Street, Burnsville, MN	\$ 1,833,395.00	\$ 1,833,395.00
	SIBLEY INDUSTRIAL CENTER I 3107 Sibley Memorial Highway, Eagan, MN	\$ 2,124,410.00	\$ 2,124,410.00
	SIBLEY INDUSTRIAL CENTER II 3103 Sibley Memorial Highway, Eagan, MN	\$ 1,164,060.00	\$ 1,164,060.00
	SIBLEY INDUSTRIAL CENTER III 3771 Sibley Memorial Highway, Eagan, MN	\$ 1,164,060.00	\$ 1,164,060.00
	Funds in Crown Bank account ending in 1715	\$ 60,207.73	\$ 216,450.00
	General Accounts Receivable	\$ 61,576.92	\$ 6,102.00

TOTALS: \$ 11,442,269.65 \$ 11,543,037.00

<i>Notes:</i>		<i>Debt</i>	<i>Collateral</i>
	<i>Fenton Sub Parcel A, LLC owns undivided 74.5394% =</i>	\$ 6,482,600.68	\$ 8,528,999.14
	<i>Bowles Sub Parcel A, LLC owns undivided 25.4606% =</i>	\$ 2,214,277.32	\$ 2,913,270.51

VERIFICATION

I, Steven B. Hoyt, am the Chief Manager of both of the Debtors. Pursuant to Local Bankruptcy Rule 4001-2(a), I declare under penalty of perjury that the information set forth in this Exhibit is true and correct to the best of my knowledge, information and belief.

Dated: 3/6/13

Signed: _____

Steven B. Hoyt

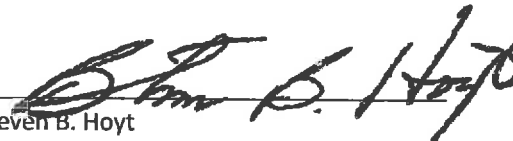


EXHIBIT B

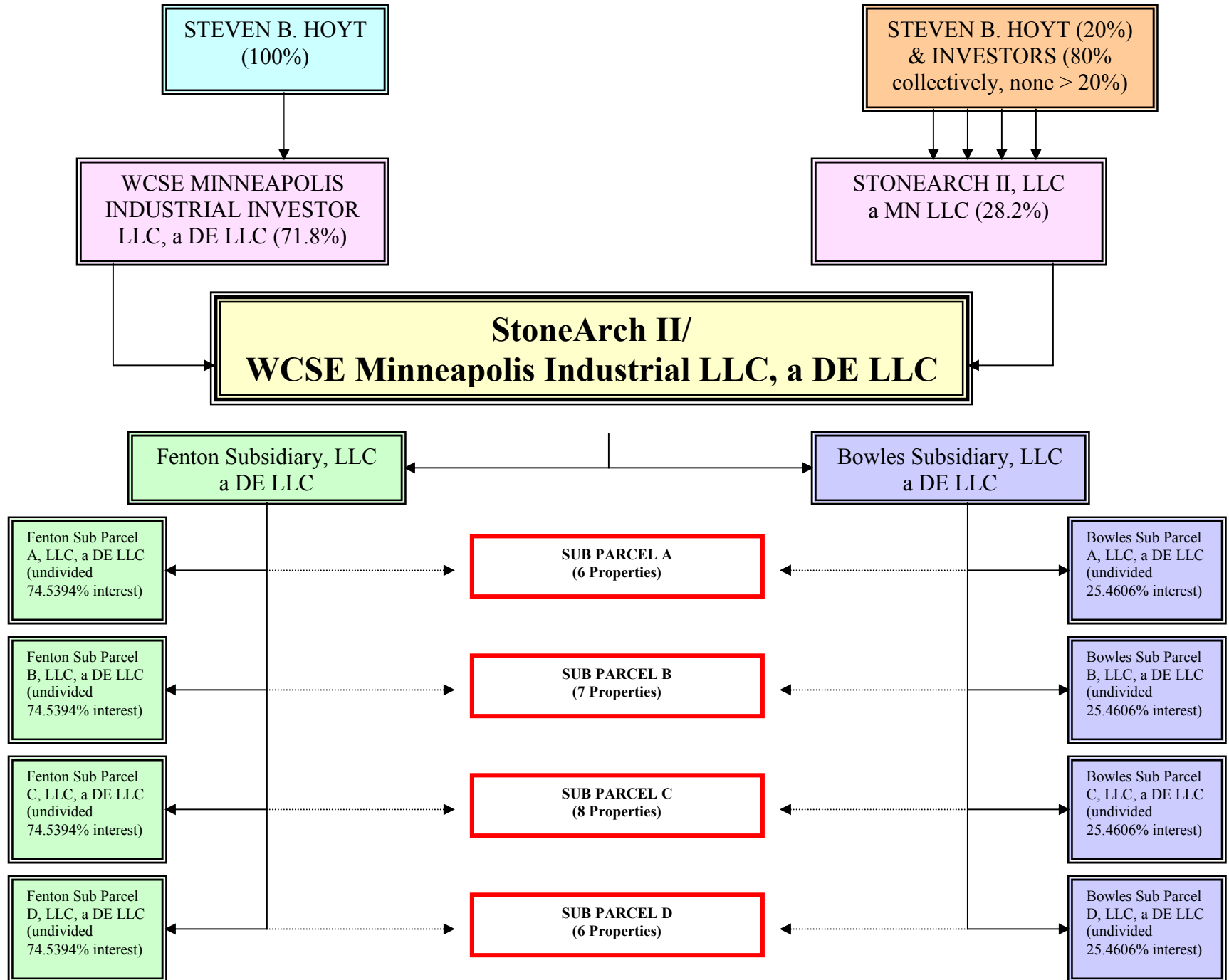


EXHIBIT C

EXHIBIT C

**FENTON SUBPARCEL A & BOWLES SUBPARCEL A
NOMURA CREDIT & CAPITAL
WELLS FARGO BANK N.A.**

	Dated	Effective	Recorded	Document Number	County or State
Mortgage & Security Agreement		12/23/2003	01/06/2004	2160881	Dakota
Restated Mortgage & Security Agreement	04/12/2004		06/07/2004	2212855	Dakota
Assignment and Modification Agreement	04/12/2004		06/07/2004	2212867	Dakota
Amended & Restated Mortgage & Security Agreement	04/12/2004		06/07/2004	2212868	Dakota
Assignment of Amended & Restated Mortgage & Security Agreement and Assignment Restated Assignment of Amended and Restated Assignment of Leases & Rents	04/12/2004	08/20/2004	12/27/2004	2279253	Dakota
Assignment of Leases & Rents		12/23/2003	01/06/2004	2160882	Dakota
Restated Assignment of Leases & Rents	04/12/2004		06/07/2004	2212856	Dakota
Assumption & Modification Agreement	04/12/2004		06/07/2004	2212867	Dakota
Amended & Restated Assignment of Leases & Rents	04/12/2004		06/07/2004	2212869	Dakota
Assignment of Amended & Restated Mortgage & Security Agreement and Assignment Restated Assignment of Amended and Restated Assignment of Leases & Rents	04/12/2004	08/20/2004	12/27/2004	2279253	Dakota
UCC Financing Statement			01/06/2004	2160883	Dakota
UCC Financing Statement			06/07/2004	2212870	Dakota
			04/22/2004	41129297	Delaware
UCC Financing Statement			01/24/2005	2287587	Dakota
UCC Financing Statement			02/06/2012	2847000	Dakota
			11/13/2008	20083937743	Delaware

EXHIBIT D

Budget: Fenton Sub Parcel A, LLC & Bowles Sub Parcel A, LLC

Income:	Budget March 2013	Budget April 2013	Total
Rent Income	\$ 76,292.00	\$ 76,292.00	\$ 152,584.00
Parking Income	\$ 400.00	\$ 400.00	\$ 800.00
CAM Income-Operating Expenses	\$ 23,929.00	\$ 23,929.00	\$ 47,858.00
CAM Income RE Tax - Operating	\$ 23,701.00	\$ 23,701.00	\$ 47,402.00
Storage Income	\$ -	\$ -	\$ -
Other Misc. Income	\$ -	\$ -	\$ -
Total Income	\$ 124,322.00	\$ 124,322.00	\$ 248,644.00
Expenses:			
Operating Expenses			
Electric	\$ 5,000.00	\$ 5,000.00	\$ 10,000.00
Water/Sewer	\$ 2,050.00	\$ 2,400.00	\$ 4,450.00
Gas	\$ 1,300.00	\$ 1,300.00	\$ 2,600.00
Roof Repair	\$ 500.00	\$ 3,000.00	\$ 3,500.00
HVAC Repair*	\$ 4,900.00	\$ 11,900.00	\$ 16,800.00
Fire Sprinkler Protection	\$ 550.00	\$ 550.00	\$ 1,100.00
Trash Removal	\$ 480.00	\$ 480.00	\$ 960.00
Other Repair & Maintenance	\$ 5,000.00	\$ 5,410.00	\$ 10,410.00
Exterminating	\$ -	\$ 580.00	\$ 580.00
Signage	\$ 200.00	\$ -	\$ 200.00
Property Taxes	\$ -	\$ -	\$ -
Management Fees	\$ 6,216.10	\$ 6,216.10	\$ 12,432.20
Landscape/Contract Service	\$ -	\$ 4,650.00	\$ 4,650.00
Parking Lot Maintenance	\$ -	\$ -	\$ -
Snow Removal	\$ 25,000.00	\$ 8,000.00	\$ 33,000.00
Janitorial Contract Services	\$ 3,670.00	\$ 3,670.00	\$ 7,340.00
Total Operating Expenses	\$ 54,866.10	\$ 53,156.10	\$ 108,022.20
Non-Recoverable Expenses			
Other Rep & Maint, Space Plan, Misc.	\$ 2,400.00	\$ 2,000.00	\$ 4,400.00
Electric - Vacancy	\$ 495.00	\$ 495.00	\$ 990.00
Gas - Vacancy	\$ 650.00	\$ 400.00	\$ 1,050.00
Leasing & Sales Commission	\$ 2,400.00	\$ 3,000.00	\$ 5,400.00
Steve Hoyt - Fee**	\$ -	\$ 5,000.00	\$ 5,000.00
Office of US Trustee Fees	\$ -	\$ 3,900.00	\$ 3,900.00
Accounting & CT Corp Fees	\$ -	\$ -	\$ -
Tenant Improvements	\$ 7,700.00	\$ 33,000.00	\$ 40,700.00
Total Non-Recoverable Expenses	\$ 13,645.00	\$ 47,795.00	\$ 61,440.00
Total Expenses	\$ 68,511.10	\$ 100,951.10	\$ 169,462.20
Net Operating Income	\$ 55,810.90	\$ 23,370.90	\$ 79,181.80

Cash at 2/28/13 \$ 216,000.00
 Cash on Hand - End of Month \$ 271,810.90 \$ 295,181.80

NOTES

*HVAC Repair in April includes \$8,000 for a new HVAC unit at Pase
 **Fee Payable to Steve Hoyt pending confirmation of Plan

**Portfolio A
Tenant Improvements & Leasing Commissions**

<u>Month</u>	<u>Tenant</u>	<u>Property</u>	<u>Unit</u>	<u>SF</u>	<u>Status/Term</u>	<u>T.I.</u>	<u>Commission</u>
March	Boost Learning	Pro Plaza I	209	1,588	Renewal-4 Year	\$ 7,700.00	\$ 2,400.00
April	Amerimark	Pro Plaza I	1502	2,074	Renewal-2 Year	\$ 8,000.00	\$ 800.00
April	Total Customer Se	Pro Plaza I	1510 A	1,472	Expansion-4 Year	\$ 25,000.00	\$ 2,200.00

<u>Month</u>	<u>Total T.I.'S</u>	<u>Total L/C</u>
March	\$ 7,700.00	\$ 2,400.00
April	\$ 33,000.00	\$ 3,000.00
	\$ -	\$ -

Boost: TI Calculations = $\$4.84/\text{sf} \times 1,588\text{sf} = \$7,700$
 Commission = $\$1.50/\text{sf} \times 1,588\text{sf} = \text{approx. } \$2,400$ which is 1/2 of a full fee for the renewal

Amerimark: TI Calculations = $\$3.85/\text{sf} \times 2,074\text{sf} = \$8,000$
 Commission = 3.5% of rent for first year and 3% of rent for second year for the renewal

Total Customer Se TI Calculations = $\$16.98/\text{sf} \times 1,472\text{sf} = \$25,000$ (expansion space)
 Commission = 7% of 1st year 6% of 2nd year 5% of 3rd year 4% of 4th year + Co-Broker Fee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Fenton Sub Parcel A, LLC
Debtor.

Case No. BKY 12-42768
Chapter 11 Case

Bowles Sub Parcel A, LLC
Debtor.

Case No. BKY 12-42765
Chapter 11 Case

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ORDER
AUTHORIZING USE OF CASH COLLATERAL ON A FINAL BASIS**

The Debtors, as debtors-in-possession, move the Court for entry of an order authorizing the Debtors to use cash collateral on a final basis. The supporting facts are set forth in the verified Motion. All capitalized terms have the meaning ascribed to them in the Motion.

**THE COURT SHOULD AUTHORIZE DEBTORS' PROPOSED
USE OF CASH COLLATERAL ON AN INTERIM AND FINAL BASIS**

The Bankruptcy Code provides that a debtor-in-possession may use cash collateral only with the secured creditor's consent or if the court, after notice and a hearing, authorizes such use. *See* 11 U.S.C. §363(c)(2). Section 363(e) of the Bankruptcy Code provides that the Court must provide the secured creditor with adequate protection of its interest upon request of the creditor.

The Eighth Circuit Court of Appeals has reasoned that:

In any given case, the Bankruptcy Court must necessarily (1) establish the value of the secured creditor's interest, (2) identify the risk to the secured creditor's value resulting from the Debtor's request for use of cash collateral, and (3) determine whether the Debtor's adequate protection proposal protects values as nearly as possible against risk to that value consistent with the concept of indubitable equivalence.

In re Martin, 761 F2d 472, 476-77 (8th Cir. 1985).

Pursuant to *Martin*, the first step is to establish the value of the secured creditor's interest. For purposes of this Motion, the value of the creditor's interest is determined by what the creditor could recover if the collateral were disposed of in the most commercially reasonable manner practicable. *In re Boring*, 91 B.R. 791, 795 (Bankr. S.D. Ohio 1988); *United States v. Smithfield Estates, Inc.*, 48 B.R. 910, 912 (Bankr. D.R.I. 1985).

As of the Filing Date, the Debtors' obligation to Lender under the First Mortgage Debt totaled approximately \$8,696,878. On the same day, the value of the Lender's collateral was approximately \$11,320,485. This gives Lender an equity cushion of approximately 30%. Hence, there is sufficient equity to protect the Lender's interests.

The second requirement of *Martin* requires the court to identify the risk to the secured creditor's value resulting from the debtor's request for use of cash collateral. In the instant cases, such risk would be that the Debtors might fail to generate sufficient replacement cash collateral to compensate for use of existing cash collateral. In these cases, that risk is minimal. Because Debtors' tenants generally sign leases and pay on a monthly basis, Debtors can project attrition, income and expenses with reasonable accuracy. Debtors project that the Lender's total collateral value will remain steady through April 30, 2013, may in fact increase, and will continue to significantly exceed the amount of the First Mortgage Debt.

The third requirement of *Martin* calls for the Court to examine the debtor's adequate protection proposal to determine that the proposal protects the value of the Bank's interest, if any, in the cash collateral relative to the risk to such value. *See Martin*, 761 F.2d at 477. Here, the Debtors note that the Lender has a continuing security interest in all post-petition rents pursuant to section 552 of the Bankruptcy Code. Debtors intend to use such rents to maintain the Pool A Properties, which in itself is a form of adequate protection. Finally, the equity cushion of

approximately 30% is more than sufficient to provide adequate protection of the value of the Lender's interest in the Pool A Properties. *See, e.g., In re Johnson*, 90 B.R. 973, 979-80 (Bankr. D. Minn. 1988) (holding that when the value of collateral is well in excess of a secured creditors' claim, the equity cushion alone constitutes adequate protection); *In re Kost*, 102 B.R. 829, 831 (D. Wyo. 1989) (collecting cases and describing how equity cushions in excess of 20 percent are generally held to provide adequate protection).

CONCLUSION

For all the foregoing reasons, Debtors respectfully request that the Court enter an order granting the relief requested in the Motion.

Dated: March 6, 2013.

LAPP, LIBRA, THOMSON,
STOEBNER & PUSCH, CHARTERED

/e/Ralph V. Mitchell
Ralph V. Mitchell (#184639)
120 South Sixth Street, Suite 2500
Minneapolis, MN 55402
(612) 338-5815

ATTORNEYS FOR DEBTORS

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Fenton Sub Parcel A, LLC
Debtor.

Case No. BKY 12-42768
Chapter 11 Case

Bowles Sub Parcel A, LLC
Debtor.

Case No. BKY 12-42765
Chapter 11 Case

ORDER AUTHORIZING USE OF CASH COLLATERAL ON A FINAL BASIS

This matter is before the Court on the Debtors' Motion for Order Authorizing Use of Cash Collateral on a Final Basis ("Motion").

Based on the Motion, all the files, records and proceedings herein, the Court having been advised in the premises, and the Court's findings of fact and conclusions of law, if any, having been stated orally and recorded in open court following the close of evidence,

IT IS HEREBY ORDERED:

1. Debtors are authorized to use cash collateral, including rents, that may be subject to the lien of Wells Fargo Bank, N.A., as trustee for the registered holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2004-LN2 (the "Lender"), consistent with the projections attached to the Motion, through April 30, 2013.
2. The Debtors shall maintain insurance on the six parcels of real estate they own (the "Properties").
3. The Debtors shall continue to maintain the Properties to their current standards.

4. The Debtors shall make records regarding rent rolls and other matters available to the Lender, or any servicer or special servicer appointed by the Lender, on reasonable request.

Dated:

Kathleen H. Sanberg
United States Bankruptcy Judge