

02-703-CD
COUNTY NATIONAL BANK -vs- KEPHART TRUCKING CO.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

COUNTY NATIONAL BANK	:	
	:	No. 2002-703-CD
Plaintiff	:	
	:	
vs.	:	
	:	
KEPHART TRUCKING COMPANY,	:	
Defendant	:	

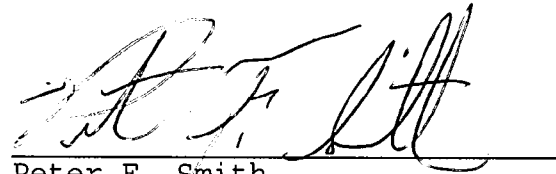
P R A E C I P E

To: William A. Shaw, Sr., Prothonotary

Dear Sir:

As counsel for the plaintiff as the above-captioned matter, I
appear and request that this action be "Discontinued."

Respectfully submitted,



Peter F. Smith
Attorney for Plaintiff

Date: December 11, 2002

cc: Dwight L. Koerber, Jr., Esq.
County National Bank

FILED

DEC 12 2002

William A. Shaw
Prothonotary

FILED

no
cc

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DEC 12 2002

Conf. of Disc.
to C/A, Atty Smith

William A. Shaw
Prothonotary

WAS

COPY

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

County National Bank

Vs.

No. 2002-00703-CD

Kephart Trucking Co.

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on December 12, 2002 marked:

Discontinued

Record costs in the sum of \$80.00 have been paid in full by Peter F. Smith, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 12th day of December A.D. 2002.

William A. Shaw, Prothonotary

FILED

MAY 03 2002

SP 01/1.02/alt Smith
Wm A. Shaw
Prothonotary *PD \$ 80.00*

2cc alt Smith

PETER F. SMITH
ATTORNEY
30 SOUTH SECOND STREET
P.O. BOX 130
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

COUNTY NATIONAL BANK,
Plaintiff

vs.

KEPHART TRUCKING CO.
Defendant

No. ~~02~~- 703 - 00

Type of Case:
Civil

Type of Pleading:
Complaint

Filed on Behalf of:
PLAINTIFF

Attorney for this party:
Peter F. Smith, Esquire
Supreme Court ID #34291
P.O. Box 130
30 South Second Street
Clearfield, PA 16830
(814) 765-5595

FILED

MAY 03 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

COUNTY NATIONAL BANK,
Plaintiff

vs.

KEPHART TRUCKING CO.
Defendant

: No. 2002-
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NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you, and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF
YOU DO NOT HAVE OR CANNOT AFFORD A LAWYER, GO TO OR
TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE
YOU CAN GET LEGAL HELP.**

COURT ADMINISTRATOR
Clearfield County Courthouse
Market and Second Streets
Clearfield, PA 16830
(814) 765-2641

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Clearfield County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

Clearfield County Court Administrator
Clearfield County Courthouse
Market and Second Streets
Clearfield, PA 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

COUNTY NATIONAL BANK,
Plaintiff

vs.

KEPHART TRUCKING CO.
Defendant

: No. 2002-
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COMPLAINT

COMES NOW, COUNTY NATIONAL BANK, by its attorney, Peter F. Smith, who states the following in support of this Complaint:

1. The Plaintiff is **COUNTY NATIONAL BANK**, a national banking institution, with principal offices at One South Second Street, Clearfield, PA 16830 (hereinafter "CNB").
2. The name of the Defendant is **KEPHART TRUCKING CO.**, which is a Pennsylvania business corporation with principal office and mailing address at P.O. Box 386, Bigler, PA 16825.
3. By instrument dated June 16, 2000, Kephart Trucking Co. guaranteed a loan made by County National Bank to Timothy L. Kephart in the amount of \$800,000.00. A true and correct copy of said Guaranty is attached hereto and incorporated herein by reference as Exhibit A.
4. A true and correct copy of the Note and Security Agreement between County National Bank and Timothy L. Kephart dated June 15, 2000 and guaranteed by Kephart Trucking

Company is attached hereto and incorporated herein by reference as Exhibit B.

5. The Note to County National Bank is in default because the monthly payments have not been made in full since February 15, 2002. The current total of past due payments and late charges is \$29,354.27. The Guaranty between the parties does not require notice, demand or presentment.

6. The Note also entitles County National Bank to collect its attorney's fees and court costs.

7. The Note permits County National Bank to accelerate the entire balance due in the event of Timothy L. Kephart's default.

8. An itemized statement of the amounts due County National Bank under said Note and after acceleration follows:

a)	Balance	\$764,753.54
b)	Interest accrued through 4/23/02	\$ 22,057.55
c)	Interest accruing after 4/23/02 at the rate of \$233.6746928 per day (to be added	\$ _____
d)	Late Charges	\$ 2,751.96
e)	Other Fees	\$ 15,312.57
f)	Court costs (to be added)	\$ _____
g)	Attorneys fees (to be added)	\$ _____

PRELIMINARY TOTAL \$804,875.62

FINAL TOTAL \$

9. County National Bank has not assigned the Note or the Defendant's Guaranty.

10. County National Bank has confessed judgment against Timothy L. Kephart according to the terms of the Note, Exhibit B, at Clearfield County Docket No. 2002-683-CD.

WHEREFORE, County National Bank prays this honorable Court to enter judgment in its favor and against the Defendant in the amount specified in paragraph 8 above.

Respectfully submitted,

Date:

4/29/02

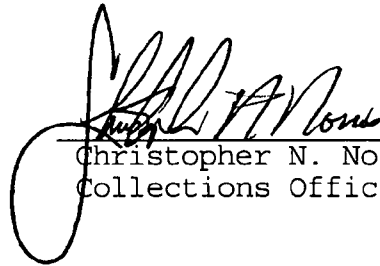
A handwritten signature in black ink, appearing to read "Peter F. Smith", written over a horizontal line.

Peter F. Smith
Attorney for Plaintiff

AFFIDAVIT

STATE OF PENNSYLVANIA :
: SS
COUNTY OF CLEARFIELD :

CHRISTOPHER N. NORRIS, being duly sworn according to law, deposes and says that he is the Collection Officer for COUNTY NATIONAL BANK, and, as such, is duly authorized to make this Affidavit, and further, that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

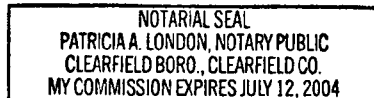


Christopher N. Norris
Collections Officer

SWORN TO AND SUBSCRIBED
before me this 26th
day of April, 2002.



Notary Public



GUARANTY BY CORPORATION

CLEARFIELD
(City)

PA
(State)

JUNE 16, 19 2000

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce

COUNTY NATIONAL BANK, P.O. BOX 42, CLEARFIELD, PA 16830
(herein, with its participants, successors and assigns, called "Bank"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of TIMOTHY L. KEPHART
P.O. BOX 386; BIGLER, PA 16825

(herein called "Borrower") or to engage in any other transactions with Borrower, the undersigned hereby absolutely and unconditionally guarantees to the Bank the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

- A. If this ☐ is checked, the undersigned guarantees to Bank the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Bank (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness").
- B. If this ☒ is checked, the undersigned guarantees to Bank the payment and performance of the debt, liability or obligation of Borrower to Bank evidenced by or arising out of the following: \$800,000.00 MORTGAGE NOTE DATED JUNE 16, 2000

and any extensions, renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

The undersigned further acknowledges and agrees with Bank that:

1. No act or thing need occur to establish the liability of the undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the undersigned or modify, reduce, limit or release the liability of the undersigned hereunder.

2. If paragraph A is checked, this is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked prospectively as to future transactions, by written notice actually received by the Bank, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Bank, or as to any renewals, extensions and refinancings thereof. The undersigned represents and warrants to the Bank that the undersigned has a direct and substantial economic interest in Borrower and expects to derive substantial benefits therefrom and from any loans and financial accommodations resulting in the creation of Indebtedness guaranteed hereby, and that this guaranty is given for a corporate purpose. The undersigned agrees to rely exclusively on the right to revoke this guaranty prospectively as to future transactions, in accordance with this paragraph, if at any time, in the opinion of the directors or officers of the undersigned, the corporate benefits then being received by the undersigned in connection with this guaranty are not sufficient to warrant the continuance of this guaranty as to future Indebtedness. Accordingly, so long as this guaranty is not revoked prospectively in accordance with this paragraph, the Bank may rely conclusively on a continuing warranty, hereby made, that the undersigned continues to be benefited by this guaranty and the Bank shall have no duty to inquire into or confirm the receipt of any such benefits, and this guaranty shall be effective and enforceable by the Bank without regard to the receipt, nature or value of any such benefits.

3. If the undersigned shall be dissolved or shall be or become insolvent (however defined) then the Bank shall have the right to declare immediately due and payable, and the undersigned will forthwith pay to the Bank, the full amount of all Indebtedness, whether due and payable or unmatured. If the undersigned voluntarily commences or there is commenced involuntarily against the undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the undersigned hereunder shall be limited to a principal amount of \$ 800,000.00 (if unlimited or if no amount is stated, the undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the undersigned hereunder. The Bank may apply any sums received by or available to the Bank on account of the Indebtedness from Borrower or any other person (except the undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the undersigned hereunder. If the liability of the undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Bank, advising the Bank that such payment is made under this guaranty for such purpose.

5. The undersigned will not exercise or enforce any right of contribution, reimbursement, recourse or subrogation available to the undersigned against any person liable for payment of the Indebtedness, or as to any collateral security therefor, unless and until all of the Indebtedness shall have been fully paid and discharged.

6. The undersigned will pay or reimburse the Bank for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by the Bank in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on the reverse side hereof, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated _____

☐ secured by _____
IN WITNESS WHEREOF, this guaranty has been duly executed by the undersigned the day and year first above written.

KEPHART TRUCKING COMPANY

By  (Title)

By _____ (Title)

ADDITIONAL PROVISIONS

7. Whether or not any existing relationship between the undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, the Bank may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the undersigned and without any notice to the undersigned. The liability of the undersigned shall not be affected or impaired by any of the following acts or things (which the Bank is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any modification, substitution, discharge, impairment, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Bank under §1111(b)(2) of the United States Bankruptcy Code.

8. The undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the undersigned will not assert, plead or enforce against the Bank any defense of waiver, release, discharge in bankruptcy, statute of limitations, res judicata, statute of frauds, anti-deficiency statute, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff available against the Bank to Borrower or any such other person, whether or not on account of a related transaction. The undersigned expressly agrees that the undersigned shall be and remain liable for any deficiency remaining after foreclosure of any mortgage or security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision.

9. The undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. The Bank shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

10. If any payment applied by the Bank to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

11. The liability of the undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the undersigned to the Bank as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

12. The undersigned represents and warrants to the Bank that (i) the undersigned is a corporation duly organized and existing in good standing and has full power and authority to make and deliver this guaranty; (ii) the execution, delivery and performance of this guaranty by the undersigned have been duly authorized by all necessary action of its directors and shareholders and do not and will not violate the provisions of, or constitute a default under, any presently applicable law or its articles of incorporation or by-laws or any agreement presently binding on it; (iii) this guaranty has been duly executed and delivered by the authorized officers of the undersigned and constitutes its lawful, binding and legally enforceable obligation (subject to the United States Bankruptcy Code and other similar laws generally affecting the enforcement of creditors' rights); and (iv) the authorization, execution, delivery and performance of this guaranty do not require notification to, registration with, or consent or approval by, any federal, state or local regulatory body or administrative agency.

13. This guaranty shall be effective upon delivery to the Bank, without further act, condition or acceptance by the Bank, shall be binding upon the undersigned and the successors and assigns of the undersigned and shall inure to the benefit of the Bank and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. This guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the undersigned and the Bank. This guaranty shall be governed by the laws of the State in which it is executed. The undersigned waives notice of the Bank's acceptance hereof and waives the right to a trial by jury in any action based on or pertaining to this guaranty.

TIMOTHY L. KEPHART P.O. BOX 386 BIGLER, PA 16825	COUNTY NATIONAL BANK COR MARKET & SECOND STS PO BOX 42 CLEARFIELD, PA 16830	Loan Number <u>1153560-4</u> Date <u>JUNE 15, 2000</u> Maturity Date <u>JUNE 15, 2015</u> Loan Amount \$ <u>800,000.00</u> Renewal Of _____
BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of EIGHT HUNDRED THOUSAND AND NO/100* * * * * Dollars \$ 800,000.00

☒ **Single Advance:** I will receive all of this principal sum on JUNE 15, 2000. No additional advances are contemplated under this note.

☐ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

☐ **Open End Credit:** You and I agree that I may borrow up to the maximum principal sum more than one time. This feature is subject to all other conditions and expires on _____

☐ **Closed End Credit:** You and I agree that I may borrow (subject to all other conditions) up to the maximum principal sum only one time.

INTEREST: I agree to pay interest on the outstanding principal balance from JUNE 15, 2000 at the rate of 11.000% per year until JUNE 15, 2005.

☒ **Variable Rate:** This rate may then change as stated below.

☐ **Index Rate:** The future rate will be _____ the following index rate: _____

☒ **No Index:** The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ **Frequency and Timing:** The rate on this note may change as often as EVERY 60 MONTHS. A change in the interest rate will take effect JUNE 16, 2005 AND JUNE 16, 2010

☐ **Limitations:** During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %. The rate may not change more than _____ % each _____

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☒ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

☐ _____

ACCRUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☐ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☒ at a rate equal to 2.000% ABOVE THE INTEREST RATE AT MATURITY

☒ **LATE CHARGE:** If a payment is made more than 15 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE PAYMENT

☐ **RETURNED CHECK CHARGE:** I agree to pay a fee of \$ _____ for each check, negotiable order of withdrawal or draft I issue in connection with this loan that is returned because it has been dishonored.

☒ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☒ are not included in the principal amount above: \$1,000.00 PROCESSING FEE

PAYMENTS: I agree to pay this note as follows:

☐ **Interest:** I agree to pay accrued interest _____

☐ **Principal:** I agree to pay the principal _____

☒ **Installments:** I agree to pay this note in 180 payments. The first payment will be in the amount of \$ 9,173.21 and will be due JULY 15, 2000. A payment of \$ 9,173.21 will be due _____

ON THE 15TH DAY OF EACH MONTH thereafter. The final payment of the entire

unpaid balance of principal and interest will be due JUNE 15, 2015

PURPOSE: The purpose of this loan is BUSINESS: PURCHASE COMMERCIAL REAL ESTATE

☒ **WARRANT OF AUTHORITY TO CONFESS JUDGMENT.** Upon default, in addition to all other remedies and rights available to you, by signing below Borrower irrevocably authorizes the prothonotary, clerk, or any attorney to appear in any court of record having jurisdiction over this matter and to confess judgment against me at any time without stay of execution. I waive notice, service of process and process. I agree and understand that judgment may be confessed against me for any unpaid principal, accrued interest and accrued charges due on this note, plus collection costs and reasonable attorneys' fees up to 15 percent of the judgment. The exercise of the power to confess judgment will not exhaust this warrant of authority to confess judgment and may be done as often as you elect. I further understand that my property may be seized without prior notice to satisfy the debt owed. I knowingly, intentionally, and voluntarily waive any and all constitutional rights I have to pre-deprivation notice and hearing under federal and state laws and fully understand the consequences of this waiver.

TIMOTHY L. KEPHART

ADDITIONAL TERMS:

A 2.00% REFINANCE FEE WILL ONLY APPLY IN THE EVENT THE LOAN IS REFINANCED BY A FINANCIAL INSTITUTION WITHIN 100 MILE RADIUS OF THIS OFFICE AND IS WAIVED FOR SIX MONTH PERIOD PRIOR TO MATURITY.

Any person who signs within this box does so to give you a security interest in the Property described on this page. This person does not promise to pay the note. "I" as used in this security agreement will include the borrower and any person who signs within this box.

REMEDIES - I will be in default on this security agreement if I am in default on any other agreement or if I fail to keep any promise contained in the terms of this agreement. If I default, you are entitled to the remedies and remedies provided in the note and under the Uniform Commercial Code. You may require me to make the secured property available to you at a place which is reasonably convenient. You may also apply first to your expenses and then to the debt. I agree that 10 days written notice sent to my last known address by first class mail will be reasonable notice under the Uniform Commercial Code. My current address is on page 1. I agree to inform you in writing of any change of my address.

[illegible]

If this agreement covers inventory, I will not dispose of it except in my ordinary course of business at the fair market value for the Property, or at

[illegible]

INSURANCE - I agree to buy insurance on the Property against the risks covered here. I will have the insurance company name you as loss payee on any such policy. You may request additional security if you agree that insurance proceeds may be used to repair or replace the Property. I will buy insurance from a firm licensed to do business in the state where you are located. The firm will be reasonably acceptable to you. The insurance will last until the Property is released from this agreement. If I fail to pay or maintain the insurance (or fail to name you as loss payee) you may

those payments as advances and add them to the unpaid principal under the note secured by this agreement or you may demand immediate

The Property will be used for a ☐ personal ☒ business ☐ agricultural ☐ purpose.

☒ If checked, file this agreement on the real estate records. Record owner (if not me)

If this agreement covers timber to be cut, minerals (including oil and gas), fixtures or crops growing or to be grown, the description of the real estate is:

THIS COMMONLY KNOWN AS KEPCART TRUCKING COMPANY, LOCATED ALONG ROUTE 322, BROADFORD TOWNSHIP, CLEARFIELD COUNTY, BIGLER, PA AND CORPORATE GUARANTY OF KEPCART TRUCKING COMPANY

☐ **Government in Kind, Deficiency Payments, and Programs:** All payments, accounts, general intangibles, or other benefits (including, but not limited to, government payments, emergency assistance payments, storage payments, warehouse receipts, letters of entitlement, and conservation reserve payments) in which I now have and in the future may have any rights or interest and, which arise under or as a result of any preexisting, current or future Federal or state governmental program (including, but not limited to, all programs administered by the Commodity Credit Corporation and the ASCS).

☐ **General intangibles:** All general intangibles including, but not limited to, tax refunds, applications for patents, patents, copyrights, trademark, domain or design of fashion.

(v) The above include any rights and interests (including all liens and security interests) which I may have by law or agreement against any account debtor or obligor for my

(a) payment for goods and other property sold or leased or for services rendered, whether or not I have earned such payment by performance; and

☐ Accounts, Instruments, Documents, Chattel Paper and Other Rights to Payment: All rights I have now and that I may have in the future to the payment of money including, but not limited to:

(c) all feed, seed, fertilizer, medicines, and other supplies used or produced in my farming operations.

(b) all crops, annual or perennial, and all products of the crops; and

your equipment. I give to you what is also included in the secured account property, but such a list is not necessary for a valid security interest in your equipment.

Equipment: All equipment including, but not limited to, all machinery, vehicles, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and recordkeeping equipment, and parts and tools. All equipment described in a list of machinery which you will file with the IRS.

are raw materials, work in process, or materials used or consumed in my business.

may be located, and all proceeds and products from the Property.

SECURITY INTEREST: I give you a security interest in all of the Property described below that I now own and that I may own in the future including, but not limited to, all parts, accessories, repairs, improvements, and accessions to the Property, whenever the Property is or

SECURITY

ADDITIONAL TERMS OF THE NOTE

DEFINITIONS: As used on pages 1 and 2, "X" means the terms that apply to this loan. "I," "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this note (together referred to as "us"). "You" or "your" means the Lender and its successors and assigns.

APPLICABLE LAW - The law of the state of Pennsylvania will govern this agreement. Any term of this agreement which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation. If any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement.

PAYMENTS - Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce accrued unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full (unless, when I make the prepayment, you and I agree in writing to the contrary).

INTEREST - Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one advance, each advance will start to earn interest only when I receive the advance. The interest rate in effect on this note at any given time will apply to the entire principal sum outstanding at that time. Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to in this note (either before or after maturity). If any notice of interest accrual is sent and is in error, we mutually agree to correct it, and if you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

INDEX RATE - The index will serve only as a device for setting the interest rate on this note. You do not guarantee by selecting this index, or the margin, that the interest rate on this note will be the same rate you charge on any other loans or class of loans you make to me or other borrowers.

POST MATURITY RATE - For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the earliest of the following:

- (a) the date of the last scheduled payment indicated on page 1 of this note;
- (b) the date you accelerate payment on the note; or
- (c) after the entry of judgment on this note by confession or otherwise and applies to amounts owed under this note on any such judgment until paid in full.

SINGLE ADVANCE LOANS - If this is a single advance loan, you and I expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph on page 2.

MULTIPLE ADVANCE LOANS - If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit.

ADVANCE PROCEDURE AND MEANS - You will advance the loan proceeds by way of check, cash, wire transfer, credit to an account or any combination as You and I agree. The advance(s) will occur upon consummation of the loan and as You and I agree, except that no advance(s) will occur until after three business days from the date of consummation if the loan is rescindable pursuant to Regulation Z (12 C.F.R. § 226).

SET-OFF - I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

"Right to receive money from you" means:

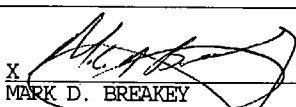
- (1) any deposit account balance I have with you;
- (2) any money owed to me on an item presented to you or in your possession for collection or exchange; and
- (3) any repurchase agreement or other nondeposit obligation.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance the due date for which you properly accelerate under this note.

If my right to receive money from you is also owned by someone who has not agreed to pay this note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights are only as a representative. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

SIGNATURES: I AGREE TO THE TERMS OF THIS AGREEMENT (INCLUDING THOSE ON PAGES 1 AND 2). I have received a copy on today's date.

X 
TIMOTHY L. KEPHART

SIGNATURE FOR LENDER: X 
MARK D. BREKEY

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right to set-off.

DEFAULT - I will be in default if any one or more of the following occur: (1) I fail to make a payment on time or in the amount due; (2) I fail to keep the Property insured, if required; (3) I fail to pay, or keep any promise, on any debt or agreement I have with you; (4) any other creditor of mine attempts to collect any debt I owe him through court proceedings; (5) I die, am declared incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts as they become due); (6) I make any written statement or provide any financial information that is untrue or inaccurate at the time it was provided; (7) I do or fail to do something which causes you to believe you will have difficulty collecting the amount I owe you; (8) any collateral securing this note is used in a manner or for a purpose which threatens confiscation by a legal authority; (9) I change my name or assume an additional name without first notifying you before making such a change; (10) I fail to plant, cultivate and harvest crops in due season if I am a producer of crops; (11) any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

REMEDIES - If I am in default on this note you have, but are not limited to, the following remedies:

- (1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued unpaid charges).
- (2) You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "SET-OFF" paragraph herein.
- (3) You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy.
- (4) You may refuse to make advances to me or allow purchases on credit by me.
- (5) You may use any remedy you have under state or federal law.
- (6) You may make use of any remedy given to you in any agreement securing this note.

By selecting any one or more of these remedies you do not give up your right to use later any other remedy. By waiving your right to declare an event to be a default, you do not waive your right to consider later the event a default if it continues or happens again.

COLLECTION COSTS AND ATTORNEY'S FEES - I agree to pay all costs of collection, replevin or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

WAIVER - I give up my rights (to the extent permitted by law) to require you to do certain things. I will not require you to:

- (1) demand payment of amounts due (presentment);
- (2) obtain official certification of nonpayment (protest); or
- (3) give notice that amounts due have not been paid (notice of dishonor).

I waive any defenses I have based on suretyship or impairment of collateral.

OBLIGATIONS INDEPENDENT - I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us together, to collect this note. You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by all or less than all of us will not release me from my duty to pay it. (Of course, you are entitled to only one payment in full.) I agree that you may at your option extend this note, or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval.

CREDIT INFORMATION - I agree and authorize you to obtain credit information about me from time to time (for example, by requesting a credit report) and to report to others your credit experience with me (such as a credit reporting agency). I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will be accurate, correct and complete.

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket #

12499

COUNTY NATIONAL BANK

02-703-CD

VS.

KEPHART TRUCKING CO.

COMPLAINT

SHERIFF RETURNS

NOW MAY 10, 2002 AT 1:35 PM DST SERVED THE WITHIN COMPLAINT ON
KEPHART TRUCKING CO., DEFENDANT AT EMPLOYMENT, RT. 322, BIGLER,
CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO TIM KEPHART, OWNER
A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN
TO HIM THE CONTENTS THEREOF.
SERVED BY: DAVIS/MORGILLO

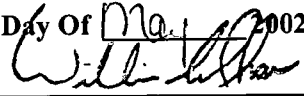
Return Costs

Cost Description

23.54 SHFF. HAWKINS PAID BY: PLFF.


10.00 SURCHARGE PAID BY: PLFF.

Sworn to Before Me This

20th Day Of May 2002


WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,


Chester A. Hawkins
Sheriff

FILED

MAY 20 2002
01323
William A. Shaw
Prothonotary



IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

COUNTY NATIONAL BANK,
Plaintiff

-VS-

KEPHART TRUCKING CO.
Defendant

PRAECIPE TO ENTER APPEARANCE
Docket No. 02-703-CD

013:07 AL
MAY 20 2002

William A. Shaw
Prothonotary

3 MC
Amy Koeshies

Law Office

DWIGHT L. KOERBER, JR.
ATTORNEY-AT-LAW
110 NORTH SECOND STREET
P. O. BOX 1320
CLEARFIELD, PENNSYLVANIA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

COUNTY NATIONAL BANK,
Plaintiff

-vs-

KEPHART TRUCKING CO.,
Defendant

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Docket No. 02-703-CD

Type of Pleading:
PRAECIPE TO ENTER
APPEARANCE

Filed on Behalf of:
DEFENDANT:
Kephart Trucking Co.

Counsel of Record for
This Party:

Dwight L. Koerber, Jr.
Pa. I.D. No. 16332

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED

MAY 20 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

COUNTY NATIONAL BANK,
Plaintiff

*

*

-vs-

Docket No. 02-703-CD

*

KEPHART TRUCKING CO.,
Defendant

*

PRAECIPE TO ENTER APPEARANCE

TO: PROTHONOTARY

Please enter my appearance on behalf of Defendant, Kephart Trucking Co.,
in the above captioned matter.


Dwight L. Koerber, Jr., Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

COUNTY NATIONAL BANK,
Plaintiff

*

*

-vs-

Docket No. 02-703-CD

*

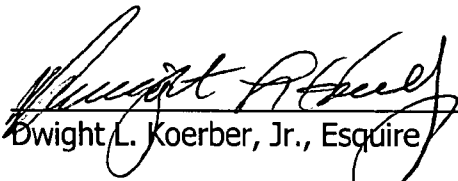
KEPHART TRUCKING CO.,
Defendant

*

CERTIFICATE OF SERVICE

This is to certify that on the 20th day of May, 2002, the undersigned served a certified copy of the foregoing PRAECIPE TO ENTER APPEARANCE in the above captioned matter upon counsel for Plaintiff. Such documents were served via United States First Class Mail upon the following:

Peter F. Smith, Esquire
30 South Second Street
P. O. Box 130
Clearfield, PA 16830


Dwight L. Koerber, Jr., Esquire