

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY 04-40007

Ch. 7

Judd Peterson,
Margaret Peterson,

Debtors.

NOTICE OF HEARING
AND MOTION FOR RELIEF
FROM THE AUTOMATIC STAY

TO: Parties in interest pursuant to LOCAL RULE 9013-3.

1. U.S. Bank National Association fka Firststar Bank, N.A. (the "Bank"), by and through its undersigned counsel, moves the court for the relief requested below and gives notice of hearing.

2. A hearing on this motion will be held before the Honorable **Robert J. Kressel**, Courtroom 8 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota, at **2:00 p.m.** on **November 4, 2004**, or as soon thereafter as counsel may be heard.

3. Any response to this motion must be filed and delivered not later than November 1, 2004, which is three days before the time set for hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 26, 2004, which is seven days before the hearing date (excluding Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, FED. R. BANKR. P. 5005, and LOCAL RULE 1070-1. The proceeding is a core proceeding. The petition commencing this chapter 7 case was filed on January 2, 2004. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and FED. R. BANKR. P. 4001. This motion is filed under FED. R. BANKR. P. 9014 and LOCAL RULES 9006-1 and 9013-1 to 9013-3. Movant requests relief from the automatic stay.

6. The Debtors are indebted to the Bank pursuant to a promissory note and mortgage, each dated July 27, 2001, true and correct copies of which are attached as Exhibits A & B, respectively (relevant pages only). Pursuant to the loan documents, the Bank holds a mortgage lien on the Debtors' real property at 3985 St. Louis Avenue, Deephaven, Minnesota.

7. The subject property is legally described as follows:

Real property in Hennepin County, Minnesota, described as follows: Lot B, "Waldon", according to the Plat thereof on file or of record in the office of the Registrar of Titles in and for said County.

8. At all times material, the Debtors have been in default of the payments and performance obligation due to the Bank. As of the date of this motion, the Debtors are delinquent in the making of payments due April 20, 2004 and thereafter. The Debtors delinquency is in excess of \$16,150.00.

9. If testimony is necessary as to any facts relevant to this motion, Loren Madson, a Real Estate Officer with the Bank, may be called to testify.

WHEREFORE, the Bank moves the Court for an order terminating the automatic stay with respect to the Bank's interest in the above-described real property, and for such other relief as may be just and equitable.

Dated: October 13, 2004

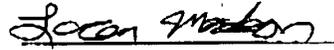
STEIN & MOORE, P.A.

/e/ Eric J. Sherburne
Eric J. Sherburne, #279389
Attorneys for Movant
332 Minnesota St., Ste. W-1650
St. Paul, MN 55101
651-224-9683
651-223-5212 fax

VERIFICATION

I, Loren Madson, a Real Estate Officer with U.S. Bank National Association fka Firststar Bank, N.A, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: October 12, 2004


Loren Madson

1810-1744

TOTAL P.02

12/15/03 83 9/20/03

33384017

FIRSTAR BANK, N.A.
101 E 5th St
St Paul MN55101
LENDER'S NAME AND ADDRESS
"You" means the Lender, its successors and assigns.

JUDD M PETERSON
471-34-2033
3985 SAINT LOUIS AVE
WAYZATA MN 55391-3534
BORROWER'S NAME AND ADDRESS
"I" includes each Borrower above, together and separately.

Loan Number 33384017
Date 07/27/2001
Maturity Date 07/20/2021
Loan Amount \$ 281267.00
Renewal Of

TERMS FOLLOWING A APPLY ONLY IF CHECKED

NOTE - For value received, I promise to pay to you, or your order, at your address above, the principal sum of: \$281,342.00

plus interest from 07/27/2001 at the rate of 9.4900 % per year until maturity Dollars \$ 281342.00

LOAN ADMINISTRATIVE FEE - I also agree to pay a loan administrative fee of \$ 75.00 and it will be paid in cash. paid pro rata over the loan term.
 withheld from the proceeds. (If this fee is withheld from the proceeds, the amount is included in the principal sum.) Upon prepayment in full (or acceleration), I will not be entitled to a rebate of part of the loan administrative fee.

VARIABLE RATE - The rate above may then change so as always to be _____ the following index rate:

_____. The interest rate may not change more than _____ % each 3
The annual interest rate in effect on this note will not at any time be more than _____ % or less than _____ %. The interest rate in effect on this note may change (as often as) _____ (assuming there is a change in the base rate) and an increase in the interest rate will cause an increase in the amount of each scheduled payment. the amount due at maturity. the number of payments.

PAYMENT - I will pay this note as follows:

(a) Interest due: _____
Principal due: _____
(b) This note has 240 payments. The first payment is \$ 2616.30 and is due 8/20/2001
A payment of \$ 2616.30 is due on the 20th day of each month
The final payment of the entire unpaid balance of principal and interest will be due 7/20/2021

INTEREST - Interest accrues on a daily basis.
 LATE CHARGE - If a payment is not paid in full on or before the tenth day after its due date, I will be charged a late fee of 5% of the payment with min \$15 / max \$30. This amount may then increase so as to always be the highest amount allowed by law under Minnesota Statutes § 47.59.
 RETURN CHECK CHARGE - I agree to pay a service charge for each returned check or returned automatic payment request. The amount of the service charge will generally be \$20.00, but if you use a law enforcement agency to collect payment and the service charge is used to reimburse the law enforcement agency, the amount of the service charge will be \$25.00.

THE PURPOSE OF THIS LOAN IS - Refinance

PREPAYMENT - If I prepay this loan in whole, I will pay you a prepayment penalty equal to 1% of the loan up to max of \$250 if closed within first 5 years.

SECURITY - You have certain rights that may affect my property as explained on page 3. This loan is is not further secured.

(a) This loan is secured by mortgage, dated 7/27/2001
(b) Security Agreement - I give you a security interest in the Property described below. The rights I am giving you in this Property and the obligations this agreement secures are defined on page 3 of this agreement.
3985 SAINT LOUIS AVE WAYZATA MN

This Property will be used for Consumer purposes.

CREDIT INSURANCE - Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional costs. I may buy any insurance from anyone I choose or I may use existing insurance.

Type	Premium	Term
Credit Life	3723.00	60 months
Credit Disability	2544.00	60 months
Joint Credit Life	0.00	0

I do do not want credit life insurance.
I do do not want credit disability insurance.
I do do not want joint credit life insurance.
I do do not want _____ insurance.
X _____ DOB 1-12-60
X _____ DOB _____

PROPERTY INSURANCE - I may obtain property insurance from anyone I want that is acceptable to you. If I get the insurance from or through you I will pay \$ _____ for _____ of coverage.

ITEMIZATION OF AMOUNT FINANCED	
AMOUNT GIVEN TO ME DIRECTLY	\$ 275000.00
AMOUNT PAID ON MY (LOAN) ACCOUNT	\$ 0.00
Firstar Processing Fee	\$ 75.00
AMOUNTS PAID TO OTHERS ON MY BEHALF:	
to Insurance Companies	\$ 6267.00
to Public Officials	\$ 0.00
Extended Service Contract	\$ 0.00
VSI Insurance	\$ 0.00
	\$ 0.00
	\$ 0.00
	\$ 0.00
	\$ 0.00
(less) PREPAID FINANCE CHARGE(S)	\$ 75.00
Amount Financed (Add all items financed and subtract)	\$ 281267.00

SINGLE INTEREST INSURANCE - I may _____ from you _____ page. I will pay \$ _____ for _____ EDIT

EXHIBIT
A

THIRD PARTY AGREEMENT

For the purposes of the provisions within this enclosure, "I," "me" or "my" means the person signing below and "you" means the Lender identified on page 1.

I agree to give you a security interest in the Property that is described on page 1. I agree to the terms of this note and security agreement but I am in no way personally liable for payment of the debt. This means that if the Borrower defaults, my interest in the Property may be used to satisfy the Borrower's debt. I agree that you may, without releasing me or the Property from this Third Party Agreement and without notice or demand upon me, extend new credit to any Borrower, renew or change this note or security agreement one or more times and for any term, or fail to perfect your security interest in, impair, or release any security (including guarantees) for the obligations of any Borrower.

I HAVE RECEIVED A COMPLETED COPY OF THIS NOTE AND SECURITY AGREEMENT.

NAME _____

X

NOTICE TO COSIGNER

You (the cosigner) are being asked to guaranty this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You also may have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become part of your credit record.

This notice is not the contract that makes you liable for the debt.

Attach FTC "Preservation of Consumer Claims and Defenses" Notice if Applicable

SIGNATURES: By signing below, you understand we are a national banking association located in Ohio and the interest rate and related charges are pursuant to the law of Ohio and federal law. The law of the state where you are located and of the state where the property is located may apply to other issues. In addition, you agree to the terms on all pages of this agreement and you promise to pay any amounts you owe under this agreement. You also state that you received a completed copy of the agreement on today's date.

(Optional)
Signed _____ For Lender
Title _____

Signature _____

Signature _____

SIGNATURES - I AGREE TO THE TERMS SET OUT ON PAGES 1, 2, 3 AND 4 OF THIS AGREEMENT. I HAVE RECEIVED A COPY OF THIS DOCUMENT ON TODAY'S DATE.

COSIGNERS - SEE NOTICE ABOVE BEFORE SIGNING.

Signature _____

Signature _____

To offer you the products and services best suited to your needs, Firststar Bank may periodically share information about you with other companies in our corporation. To direct us to not share this information within our corporation, (other than information relating solely to your transactions or experiences with Firststar Bank), you must tell us so in writing. You must supply your name, address, social security number and account number, in writing, to Firststar Bank, Information Sharing Notification Enclosed, P.O. Box 5224, Cincinnati, Ohio 45201-5224.

16.
KTC
3429374

BY [Signature]
REGISTRAR OF TITLES
HENNEPIN COUNTY
SEP 07 2001 4PM
OFFICE OF THE REGISTRAR
HENNEPIN COUNTY
OFFICE OF THE REGISTRAR
3429374
Wet

790698
KTC
3429374

MORTGAGE

33884017

(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage (Security Instrument) is July 27th 2001 and the parties, their addresses and tax identification numbers, if required, are as follows:

MORTGAGOR: **JUDD MARTIN PETERSON and MARGARET PETERSON who are husband and wife**

If checked, refer to the attached Addendum incorporated herein, for additional Mortgagors, their signatures and acknowledgments.

LENDER: **Firstar Bank, N.A,
1850 Osborn Ave.
Oshkosh, WI 54901**

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, sells, conveys and mortgages to Lender, with the power of sale, the following described property:

REAL PROPERTY IN HENNEPIN COUNTY, MINNESOTA, DESCRIBED AS FOLLOWS: LOT B, "WALDON", ACCORDING TO THE PLAT THEREOF ON FILE ON FILE OR OF RECORD IN THE OFFICE OF THE REGISTRAR OF TITLES IN AND FOR SAID COUNTY. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

TORRENS CERTIFICATE OF TITLE NO. 790698

Henn Co MRT
DJY#40788
8/31/01
Paid \$660.00

The property is located in **HENNEPIN County, at 3985 SAINT LOUIS AVE.,
WAYZATA, MN 55391**

When Recorded Mail to:
Fidelity National-LPS
P.O. BOX 19523, Irvine, CA 92523
FRSTR

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

Parcel Number: **19-117-22-22-0055
MN-SP-2501- FIRSTAR CCC#72501
2536580**



MINNESOTA - MORTGAGE (NOT FOR OPEN-END CREDIT OR FOR FNMA, FHLMC, FHA OR VA USE)
1994 Bankers Systems, Inc. St. Cloud, MN Form SS-RE-MTG-MN 1/13/99 6098AD 1/99

26. OTHER TERMS. If checked, the following are applicable to this Security Instrument:

Construction Loan. This Security Instrument secures an obligation incurred for the construction of an improvement on the Property.

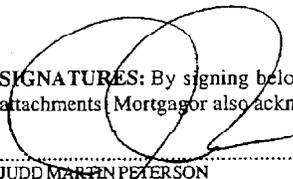
Fixture Filing. Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property. This Security Instrument suffices as a financing statement and any carbon, photographic or other reproduction may be filed of record for purposes of Article 9 of the Uniform Commercial Code.

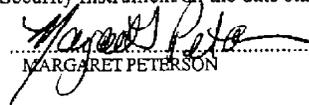
Riders. The covenants and agreements of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument. (Check all applicable boxes)

Condominium Rider Planned Unit Development Rider Other

Additional Terms.

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Mortgagor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

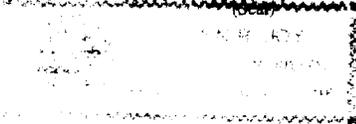

..... 7/27/01
JUDD MARTIN PETERSON (Date)

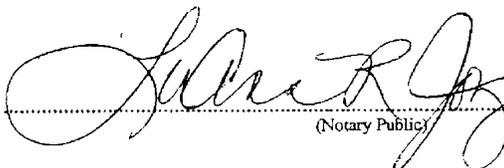

..... 7/27/01
MARGARET PETERSON (Date)

ACKNOWLEDGEMENT:

STATE OF Minnesota, COUNTY OF Ramsey } ss.
(Individual) This instrument was acknowledged before me this 27th day of July 2001
By JUDD MARTIN PETERSON and MARGARET PETERSON who are husband and wife.

My commission expires:




.....
(Notary Public)

This instrument was prepared by Bobbie-Jo Hinsch
of Firststar Bank N.A.

FIRSTSTAR BANK WISCONSIN
PO Box 3490
Oshkosh WI 54903-3490

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY 04-40007

Ch. 7

Judd Peterson,
Margaret Peterson,

Debtors.

MEMORANDUM IN SUPPORT
OF MOTION FOR RELIEF
FROM THE AUTOMATIC STAY

U.S. Bank National Association fka Firststar Bank, N.A. (the “Bank”) submits the memorandum in support of its Motion for Relief from the Automatic Stay.

ARGUMENT

Section 362(d) of the Bankruptcy Code provides, in relevant part, as follows:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest; [or]

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) The debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization.

11 U.S.C. § 362. The Bankruptcy Code provides an opportunity for relief from the automatic stay for cause, including lack of adequate protection. 11 U.S.C. § 362(d)(1). The Bankruptcy Code also provides an opportunity for relief from the automatic stay with respect to property in which a debtor has no equity and which is not necessary to the debtor’s reorganization. 11 U.S.C. § 362(d)(2).

Cause exists for relief from the automatic stay under 11 U.S.C. § 362(d)(1). The interests of the Bank are not adequately protected. The standards for adequate protection in the Eighth Circuit are set forth in *In Re Martin*, 761 F.2d 472 (8th Cir. 1985). Continued use of the collateral and the passage of time result in depreciation of value. The Bank is not being compensated for this depreciation. Nor is the Bank being compensated for interest as it continues to accrue on the subject loans.

Pursuant to 11 U.S.C. § 362(g), the burden is on the debtor to prove the absence of cause or the existence of adequate protection.

Debtors are in default on the loan. The Bank has not been offered nor received adequate protection of its interest in the property. Such circumstances constitute cause justifying relief from the stay. *United Savings Assn. of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988).

WHEREFORE, the Bank requests the relief set forth in the accompanying verified motion.

Dated: October 13, 2004

STEIN & MOORE, P.A.

/e/ Eric J. Sherburne
Eric J. Sherburne, #279389
Attorneys for Movant
332 Minnesota St., Ste. W-1650
St. Paul, MN 55101
651-224-9683
651-223-5212 fax

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY 04-40007

Ch. 7

Judd Peterson,
Margaret Peterson,

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Debtors.

The undersigned, an employee Stein & Moore, P.A., declares that on October 13, 2004, she served the following:

1. Notice of Hearing and Motion for Relief from the Automatic Stay;
2. Memorandum in Support of Motion for Relief from the Automatic Stay; and
3. Proposed order,

on each of the entities named below, by U.S. mail (unless otherwise indicated) by mailing to each of them a copy thereof by enclosing the same in an envelope with first class postage prepaid and depositing the same in the post office at St. Paul, Minnesota, addressed to each of them as follows:

Judd Peterson
Margaret Peterson
3985 St. Louis Ave.
Deephaven, MN 55391

Cass S. Weil/Lorie A. Klein
Moss & Barnett
90 S. 7th Street, Ste. 4800
Minneapolis, MN 55402

Dwight R. J. Lindquist, Trustee
527 Marquette Ave.
Suite 1510
Minneapolis, MN 55402

U.S. Trustee
1015 U.S. Courthouse
300 S. 4th Street
Minneapolis, MN 55415

Wells Fargo Home Mortgage, Inc.
c/o Usset & Weingarden, PLLP
4500 Park Glen Rd., Suite 310
Minneapolis, MN 55416

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

Dated: October 13, 2004

/e/ Christy L. Lattimore
Christy L. Lattimore

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY 04-40007

Ch. 7

Judd Peterson,
Margaret Peterson,

Debtors.

ORDER
FOR RELIEF FROM
THE AUTOMATIC STAY

At Minneapolis, Minnesota this 4th day of November, 2004.

This matter came before the Court on a motion by U.S. Bank National Association for an order for relief from the automatic stay. Appearances, if any, were noted on the record. Based on the motion, file, records, and proceedings herein,

IT IS ORDERED:

1. U.S. Bank National Association is granted relief from the automatic stay of 11 U.S.C. § 362 with respect to real property described as follows:

**Real property in Hennepin County, Minnesota, described as follows: Lot B,
"Waldon", according to the Plat thereof on file or of record in the office of the
Registrar of Titles in and for said County.**

2. Notwithstanding FED. R. BANKR. P. 4001(a)(3), this Order is effective immediately.

Honorable Robert J. Kressel
United States Bankruptcy Judge