UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

In Re:	Chapter 13 Bky. Case No. 04-60443 DDO
Allen F. Boit and Jewel A. Marks-Boit, Debtors.	**NOTICE OF HEARING AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

TO: DEBTORS ABOVE-NAMED AND OTHER PARTIES IN INTEREST SPECIFIEDIN LOCAL RULE 9013-3.

1. Green Tree Loan Company, formerly known as Conseco Finance Loan Company ("Green Tree"), by its undersigned attorney, moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hear Green Tree's motion at 1:00 p.m. on September 28, 2004, or as soon thereafter as counsel can be heard, in Courtroom 2 of the United States Bankruptcy Court, U.S. P.O. Building, 118 South Mill Street, Fergus Falls, Minnesota, 56537.

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

4. This Court has jurisdiction over this proceeding under 28 U.S.C. Sections 157 and 1334, Fed. R. Bankr. P. 5005, and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on April 14, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. §362(d) and Fed R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. Green Tree requests that it be granted relief from the automatic stay of 11 U.S.C. Section 362(a) to permit it to foreclose a certain mortgage held by it.

6. On February 8, 2002, Debtors executed and delivered to Green Tree a promissory note in the original principal amount of $63,496.67. The note requires the payment of monthly installments of principal and interest of $782.61. A true and correct copy of this note is attached hereto as Exhibit A.

7. On February 8, 2002, Debtors executed and delivered to Green Tree a mortgage to secure the payment of the promissory note on the following described real property in Mahnomen County, Minnesota:

> The West Half of the Southeast Quarter of the Southeast Quarter (W½ of SE¼ of SE¼), Section Thirty-five (35), Township One Hundred Forty-five (145), North of Range Forty-two (42), West of the Fifth Principal Meridian.

Said mortgage was filed for record February 25, 2002, in Volume 102 of Mortgages, Page 108, as Document No. 115341 in the Office of the County Recorder of Mahnomen County, Minnesota. A true and correct copy of this mortgage is attached hereto as Exhibit B.

8. The Debtors' Chapter 13 plan provides that the Debtors will make monthly payments to Green Tree of all post-petition amounts due under the promissory note and

mortgage, beginning with the payment due on April 15, 2004. Debtors have made the post-petition payments for the months of April and May, 2004, but have failed to make the post-petition payments for the months of June, 2004, and thereafter. Debtors' failure to make these monthly payments constitutes a material default under the plan. The total amount of the post-petition payments in default, as of September 28, 2004, is $3,251.74, in addition to the legal fees and costs incurred by the attorneys for Green Tree in pursuing this motion.

9. There is due and owing under the promissory note and mortgage, as of September 28, 2004, an unpaid principal balance of $60,728.85, accrued interest of $4,097.60 and late charges of $121.30, for a total due of $64,947.75, in addition to the legal fees and costs incurred by the attorneys for Green Tree in pursuing this motion. In addition, according to Debtors' bankruptcy schedules, there is a first mortgage against the property which is held First National Bank and which has an approximate balance due of $17,915.00 and a third mortgage which is held by the SBA and which has an approximate balance due of $155,000.00.

10. According to Debtors' bankruptcy schedules, the fair market value of the subject property is $240,000.00.

11. Debtors have made no offer of adequate protection under 11 U.S.C. §361.

12. Pursuant to Local Rule 9013-2, Green Tree gives notice that it may, if necessary, call Gustavo Hernandez, Bankruptcy Specialist, Green Tree Loan Company, 7360 Kyrene Road, Tempe, Arizona, 85283, to testify regarding the indebtedness and collateral value.

13. A separate memorandum of facts and law is submitted with this motion as required by Local Rule 9013-2.

WHEREFORE, Green Tree, by its undersigned attorney, moves the Court for an order pursuant to 11 U.S.C. Section 362(d) modifying the automatic stay to permit Green Tree to foreclose that certain above described mortgage held by it and for such other and further relief as the Court deems just and equitable.

Dated: August 18, 2004.

MURNANE, CONLIN, WHITE & BRANDT
PROFESSIONAL ASSOCIATION
Attorneys for Movant

By /e/ Ricardo Figueroa
RICARDO FIGUEROA (#0282224)
444 Cedar Street, Suite 1800
St. Paul, Minnesota 55101
Telephone (651) 227-9411

VERIFICATION

I, Jennifer Santesteban, Bankruptcy Specialist of Green Tree Loan Company formerly known as Conseco Finance Loan Company, declare under penalty of perjury that Paragraphs 6 through 12 of the foregoing Notice of Hearing and Motion for Relief from the Automatic Stay are true and correct according to the best of my knowledge, information, and belief.

DATED: August 17, 2004.

Jennifer Santesteban

GT-15-00-092 (2/01)

APP # 0201040714
LN # 69-1282965-9

NOTE

February 8, 2002 (Date) Mahnomen (City) Minnesota (State)

1482 State Highway 200 Mahnomen, Minnesota 56557 (Property Address)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 63,496.67 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is Conseco Finance Loan Company, 1550 East 79th St., Suite 650, Bloomington, MN 55425

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 12.500 %. Interest will be charged beginning on February 13, 2002.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Periodic Payments

I will pay principal and interest by making periodic payments when scheduled:

☒ I will make 180 payments of $ 782.61 each on the 15th of each Month beginning on March 15, 2002.

N/A ☐ I will make payments as follows:

N/A ☐ In addition to the payments described above, I will pay a "Balloon Payment" of $ ..... on ..... . The Note Holder will deliver or mail to me notice prior to maturity that the Balloon Payment is due. This notice will state the Balloon Payment amount and the date that it is due.

(B) Maturity Date and Place of Payments

I will make these payments as scheduled until I have paid all of the Principal and interest and any other charges described below that I may owe under this Note. My periodic payments will be applied as of its scheduled due date and will be applied to interest before Principal. If, on February 15, 2017, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my periodic payments at Conseco Finance, 7360 South Kyrene Road, Tempe, AZ 85283 or at a different place if required by the Note Holder.

4. BORROWER'S RIGHT TO PREPAY AND PREPAYMENT PENALTY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. ☐ I will pay a Prepayment penalty of N/A if I prepay this Note in full.

The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my periodic payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any periodic payment by the end of 10 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be ** ~~% of my overdue payment of principal and interest~~. I will pay this late charge promptly but only once on each late payment.

(B) Default ** 5% of payment, or $5.20, whichever is greater.

If I do not pay the full amount of each periodic payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

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

EXHIBIT A

A.B. JB

(E) Payment of Note Holder's Costs and Expenses

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

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(B) on page 1 of this Note or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

9. ARBITRATION

All disputes, claims, or controversies arising from or relating to the extension of credit evidenced by this Note or the relationships which result therefrom, or the validity of this arbitration clause or the entire Note, shall be resolved by binding arbitration by one arbitrator selected by Note Holder with my consent. This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, Title 9 of the United States Code. Judgment upon the award rendered may be entered in any court having jurisdiction. The parties agree and understand that they choose arbitration instead of litigation to resolve disputes. The parties understand that they have a right or opportunity to litigate disputes in court, but that they prefer to resolve their disputes through arbitration, except as provided herein. **THE PARTIES VOLUNTARILY AND KNOWINGLY WAIVE ANY RIGHT THEY HAVE TO A JURY TRIAL, EITHER PURSUANT TO ARBITRATION UNDER THIS CLAUSE OR PURSUANT TO A COURT ACTION BY NOTE HOLDER (AS PROVIDED HEREIN).** The parties agree and understand that all disputes arising under case law, statutory law, and all other laws including, but not limited to, all contract, tort, and property disputes, will be subject to binding arbitration in accord with this Agreement. I agree that I shall not have the right to participate as a representative or a member of any class of claimants pertaining to any claim arising from or relating to the extension of credit evidenced by this Note. The parties agree and understand that the arbitrator shall have all powers provided by law and the Note. These powers shall include all legal and equitable remedies, including, but not limited to, money damages, declaratory relief, and injunctive relief. Notwithstanding anything hereunto the contrary, Note Holder retains an option to use judicial or non-judicial relief to enforce a security agreement relating to the collateral secured in a transaction underlying this arbitration agreement, to enforce the monetary obligation or to foreclose on the collateral. Such judicial relief would take the form of a lawsuit. The institution and maintenance of an action for judicial relief in a court to foreclose upon any collateral, to obtain a monetary judgment or to enforce the security agreement, shall not constitute a waiver of the right of any party to compel arbitration regarding any other dispute or remedy subject to arbitration in this Note, including the filing of a counterclaim in a suit brought by Note Holder pursuant to this provision. For purposes of this arbitration clause, the term "parties" means Note Holder and the undersigned borrower(s), collectively.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. SECURED NOTE

In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

> **Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law as of the date of this Security Instrument.
>
> If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

12. BALLOON PAYMENT DISCLOSURE

[Complete the Balloon Payment notice below if this Note provides for a Balloon Payment at Section 3(A) on page 1 of this Note.]

THIS LOAN IS PAYABLE IN FULL .....N/A..... . I MUST REPAY THE ENTIRE PRINCIPAL BALANCE OF THE LOAN AND UNPAID INTEREST THEN DUE, WHICH MAY BE A LARGE PAYMENT. THE LENDER IS UNDER NO OBLIGATION TO REFINANCE THE LOAN AT THAT TIME. I WILL, THEREFORE, BE REQUIRED TO MAKE PAYMENT OUT OF OTHER ASSETS THAT I MAY OWN, OR I WILL HAVE TO FIND A LENDER, WHICH MAY BE THE LENDER I HAVE THIS LOAN WITH, WILLING TO LEND ME THE MONEY. IF I REFINANCE THIS LOAN AT MATURITY, I MAY HAVE TO PAY SOME OR ALL OF THE CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW LOAN EVEN IF I OBTAIN REFINANCING FROM THE SAME LENDER.

* See Additional Language Addendum

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Allen F Bolt .....(Seal) -Borrower

Jewel Bolt .....(Seal) -Borrower

[Sign Original Only]

Application # 0201040714
[redacted] # 6912829659

NSF ADDENDUM

This Addendum supplements the provisions of that Note dated 02/08/2002 by and between Conseco Finance Loan Company and Allen F Boit; This Addendum shall be incorporated into and shall become a part of said Note.

If any instrument which I submit to you for payment of this note is returned unpaid for any reason, I will pay you a fee of $30.00.

Borrower: Allen F Boit 2-8-02
Allen F Boit Date

Borrower: Jewel Boit 2-8-02
Jewel Boit Date

#100168

App#: 0201040714

Additional Language Addendum

This Addendum supplements the provisions of that Note dated 02/08/2002 by and between Conseco Finance Loan Company and Allen F Boit; This Addendum shall be incorporated into and shall become a part of said Note.

This extension of credit is made under the authority of Minn. Stat. Sec. 53.04 and 47.204, and federal laws, as applicable.

Borrower: Allen F Boit 2-8-02
Allen F Boit Date

Borrower: Jewel Boit 2-8-02
Jewel Boit Date

112954

2/22 2002 No. 2151
Registration Tax Hereon Of [illegible]
[illegible] Dollars Paid
[illegible] County Treasurer
Counter Signed
Frank Thompson
County Auditor

115341

STATE OF MINNESOTA
COUNTY OF MAHNOMEN
Received for record the 25th day of February A.D. 2002 at 8 o'clock A M and recorded in Vol 102 of Mtgs on page 108
SUSAN BENDICKSON
COUNTY RECORDER
Eileen Refshaw
Deputy

GT-15-24-090 (6/00)
~~Return To:~~
Conseco Finance
Attn: Trailing Documents Area
7360 South Kyrene Road
Tempe, AZ 85283

MORTGAGE
(With Future Advance Clause)

Application # 0201040714
Loan # 6912829659

1. **DATE AND PARTIES.** The date of this Mortgage (Security Instrument) is February 8, 2002 and the parties, their addresses and tax identification numbers, if required, are as follows:

MORTGAGOR: Allen F Boit, Jewel Boit

husband and wife as joint tenants

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

LENDER: Conseco Finance Loan Company
1550 East 79th St.
Suite 650
Bloomington, Minnesota 55425

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:

Parcel ID: 11.035.0600
See Exhibit A for full Legal Description.

Return to: 661399
MORTGAGE INFORMATION SERVICES, INC.
11059 W. MAPLE ROAD, SUITE D
OMAHA, NEBRASKA 68164

INDEXED ✓
TRACTED ✓
TRACTED COMPARED ✓
GRANTOR ✓
GRANTEE ✓

The property is located in Mahnomen (County) at
1482 State Highway 200 (Address), Mahnomen (City), Minnesota 56557 (ZIP Code)

EXHIBIT B

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").

3. **MAXIMUM OBLIGATION LIMIT.** ☒ Notwithstanding anything to the contrary herein, enforcement of this Security Instrument is limited to a predetermined debt amount of $ 63,496.67 under chapter 287 of Minnesota Statutes. ☐ This Security Instrument secures an indeterminate amount and the mortgage registration tax will be paid according to chapter 287 of Minnesota Statutes. Additional amounts secured by this Security Instrument include interest and any other amount advanced by Lender in protection of the Property or this Security Instrument including but not limited to taxes, assessments, charges, claims, fines, impositions, insurance premiums, amounts due under prior or superior mortgages and other prior or superior liens, encumbrances and interests, legal expenses and attorneys' fees.
4. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:
   A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. *(You must specifically identify the debt(s) secured and you should include the final maturity date of such debt(s).)*

      Note dated February 8, 2002, between Conseco Finance Loan Company and Allen F Boit, Jewel Boit, for $63,496.67, maturing February 15, 2017.

   B. All future advances from Lender to Mortgagor executed after this Security Instrument whether or not this Security Instrument is specifically referenced. If more than one person signs this Security Instrument, each Mortgagor agrees that this Security Instrument will secure all future advances that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. All future advances are secured by this Security Instrument even though all or part may not yet be advanced. Nothing in this Security Instrument shall constitute a commitment to make additional future advances or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.
   C. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

   This Security Instrument will not secure any other debt if Lender fails to give any required notice of the right of rescission.
5. **PAYMENTS.** Mortgagor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.
6. **WARRANTY OF TITLE.** Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage, with the power of sale, the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.
7. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:
   A. To make all payments when due and to perform or comply with all covenants.
   B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
   C. Not to allow any modification or extension of, nor to request any future advances under, any note or agreement secured by the lien document without Lender's prior written consent.
8. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.
9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Security Instrument is released.
10. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor shall not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims and actions against Mortgagor, and of any loss or damage to the Property.

    Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

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11. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney-in-fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.
12. **LEASEHOLDS; CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** Mortgagor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.
13. **DEFAULT.** Mortgagor will be in default if any of the following occur:
    A. Any party obligated on the Secured Debt fails to make payment when due.
    B. A breach occurs under the terms of this Security Instrument or any other document executed for the purpose of creating, securing or guaranteeing the Secured Debt.
    C. Any statement, representation or warranty made by Mortgagor or any co-maker, endorser, guarantor or surety to Lender at any time shall prove to have been incorrect or misleading in any material respect when made.
    D. Mortgagor or any such co-maker, endorser, guarantor or surety shall die, liquidate, merge, consolidate, transfer a substantial part of its property, or if a partnership, limited liability partnership, or limited liability company, suffer the death, dissolution or liquidation of any partner or member.
    E. A good faith belief by Lender that Lender at any time is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment or the value of the Property is impaired.
14. **REMEDIES ON DEFAULT.** If this is a conventional loan under Minn. Stat. § 47.20, or as required under Minn. Stat. Chapter 53, Lender will give borrower written notice of default prior to foreclosure, "by certified mail at the address of the Property listed in this Security Instrument or such other address borrower may have designated to Lender in writing," unless the default consists of the sale of the Property without Lender's consent. The notice will specify: (a) the nature of the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is mailed by which the default must be cured; (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by the mortgage and sale of the mortgaged premises; (e) that the borrower has the right to reinstate the mortgage after acceleration; and (f) that the borrower has the right to bring a court action to assert the nonexistence of a default or any other defense of the borrower to acceleration and sale. Additionally, in some other instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Mortgagor is in default. Upon default, Lender shall have the right, without declaring the whole indebtedness due and payable, to foreclose against all or any part of the Property. This lien shall continue as a lien on any part of the Property not sold on foreclosure.

    At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the terms of the Secured Debt, this Security Instrument and any related documents, including without limitation, the power to sell the property.

    If there is a default, Lender may, in addition to any other permitted remedy, advertise and sell the property as a whole or in separate parcels at public auction to the highest bidder for cash and convey absolute title free and clear of all right, title and interest of Mortgagor at such time and place as Lender designates. If Lender invokes the power of sale, Lender shall give notice of the sale including the time, terms and place of sale and a description of the property to be sold as required by the applicable law in effect at the time of the proposed sale. Lender or its designee may purchase the Property at any sale.

    Upon the sale of the Property and to the extent not prohibited by law, Lender shall make and deliver a deed to the Property sold which conveys absolute title to the purchaser. Lender shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Mortgage; (c) any excess to the person or persons legally entitled to it. The recitals in any deed of conveyance shall be prima facie evidence of the facts set forth therein.

    If the Property is sold pursuant to this section, Mortgagor, or any person holding possession of the Property through Mortgagor, shall immediately surrender possession of the Property to the purchaser at the sale. If possession is not surrendered, Mortgagor or such person shall be a tenant holding over and may be dispossessed in accordance with applicable law.

    All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.
15. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Security Instrument. Mortgagor will also pay on demand any amount incurred by Lender for insuring, inspecting, preserving or otherwise protecting the Property and Lender's security interest. These expenses will bear interest from the date of the payment until paid in full at the contract interest rate in effect from time to time as provided in the terms of the Secured Debt. Mortgagor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, attorneys' fees, court costs, and other legal expenses. This Security Instrument shall remain in effect until released. Mortgagor agrees to pay for any recordation costs of such release.

16. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law.
Mortgagor represents, warrants and agrees that:
   A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.
   B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
   C. Mortgagor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor shall take all necessary remedial action in accordance with any Environmental Law.
   D. Mortgagor shall immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.
17. **CONDEMNATION.** Mortgagor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.
18. **INSURANCE.** Mortgagor shall keep Property insured against loss by fire, flood, hurricane, earthquake, tornado, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.
All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.
Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Mortgagor. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.
19. **ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.
20. **FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Mortgagor will provide to Lender upon request any financial statement or information Lender may deem reasonably necessary. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and Lender's lien status on the Property.
21. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Mortgagor signs this Security Instrument but does not sign an evidence of debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt, and Mortgagor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Mortgagor and Lender.
22. **APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Security Instrument is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.

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JB JB

23. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.
24. **WAIVERS.** Except to the extent prohibited by law, Mortgagor waives all appraisement, dower and homestead exemption rights relating to the Property.
25. **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.** Notwithstanding anything to the contrary herein, the maximum known principal indebtedness secured by this mortgage is $63,496.67

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Mortgagor also agrees that Lender has furnished Mortgagor with a conformed copy of the promissory note and mortgage on the date stated on page 1.

Allen F Boit
(Signature) Allen F Boit (Date)

Jewel Boit
(Signature) Jewel Boit (Date)

(Signature) (Date)

(Signature) (Date)

ACKNOWLEDGMENT:

(Individual)

STATE OF Minnesota, COUNTY OF Mahnomen} ss.

This instrument was acknowledged before me this 8th day of Febuary, 2002

by Allen F Boit, Jewel Boit husband & wife as joint tenants

My commission expires:

Gloria J Weinkler
(Notary Public)

GLORIA J. WINKLER
NOTARY PUBLIC MINNESOTA
My Comm. Exp. Jan. 31, 2005

This instrument was prepared by Mark B Peterson, of Consecp Finance Loan Company, 1550 East 79th St., Suite 650, Bloomington, MN 55425

EXHIBIT A

Legal Description:

The West Half of the Southeast Quarter of the Southeast Quarter (W 1/2 SE 1/2 SE 1/2). Section Thirty-five (35), Township One Hundred Forty-five (145), North of Range Forty Two (42) West of the Fifth Principal Meridian in Mahnomen County, Minnesota.

Abstract Property.

Parcel ID: 11.035.0600

AB JB

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

In Re:	Chapter 13 Bky. Case No. 04-60443 DDO
Allen F. Boit and Jewel A. Marks-Boit, Debtors.	**MEMORANDUM OF FACTS AND LAW**

Green Tree Loan Company, formerly known as Conseco Finance Loan Company ("Green Tree"), by its undersigned attorney, submits this Memorandum of Facts and Law in support of its motion for relief from the automatic stay under 11 U.S.C. §362(d).

FACTS

Debtors commenced this Chapter 13 case on April 14, 2004. Green Tree holds a valid, duly recorded mortgage on real property owned by Debtors. Debtors have materially defaulted under their Chapter 13 plan by failing to make the post-petition payments for the months of June, 2004, and thereafter. The total amount of the post-petition payments in default, as of September 28, 2004, is $3,251.74. The total amount due and owing under the promissory note and mortgage, as of September 28, 2004, is $64,947.75. There is also a first mortgage against the property which has an approximate balance due of $17,915.00 and a third mortgage which has an approximate balance due of $155,000.00. The fair market value of the subject property is $240,000.00.

Green Tree seeks relief from the automatic stay under 11 U.S.C. §362(d) which provides in pertinent 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.

11 U.S.C. §362(d) (West 1991). A party requesting relief from the automatic stay in a Chapter 13 case must demonstrate that the following elements are present:

(1) the existence of the underlying debt and the lien (including proper perfection or recordation); **and**

(2) the existence of "cause" under Section 362(d)(1) for stay relief, including lack of adequate protection.

11 U.S.C. §362(d). See First Federal Savings and Loan Association of Minneapolis v. Whitebread (In re Whitebread), 18 B.R. 192 (Bkrtcy. D. Minn. 1982). See generally In re Ocasio, 97 B.R. 825 (Bkrtcy. E.D. Pa. 1989); In re Greiman, 45 B.R. 574 (Bkrtcy. Iowa 1984). The party moving for stay relief has the burden of proof on the issues of the amount of debt and the validity of the underlying lien, as well as the fact that there has been a material default under the Chapter 13 plan. 11 U.S.C. §362(g)(1). The debtor or other party responding to the motion for stay relief has the burden of proof on the issues of lack of cause and the existence of adequate protection. 11 U.S.C. §362(g)(2).

The Debtors in this case have materially defaulted under their Chapter 13 plan by failing to make the post-petition payments required under the plan for four months. Such material default under the plan constitutes "cause" within the meaning of §362(d)(1). Whitebread, 18 B.R. at 193 (debtors failed to maintain their mortgage payments due after filing).

Green Tree respectfully requests this Court to enter an order pursuant to 11 U.S.C. §362(d) granting Green Tree relief from the automatic stay so that Green Tree may foreclose the subject mortgage held by it.

Dated: August 18, 2004.

Respectfully submitted,

MURNANE, CONLIN, WHITE & BRANDT
PROFESSIONAL ASSOCIATION
Attorneys for Movant

By /e/ Ricardo Figueroa

RICARDO FIGUEROA (#0282224)
444 Cedar Street, Suite 1800
St. Paul, Minnesota 55101
Telephone (651) 227-9411

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

In Re:

Allen F. Boit and Jewel A. Marks-Boit,

Debtors.

Chapter 13
Bky. Case No. 04-60443 DDO

UNSWORN DECLARATION FOR PROOF OF SERVICE

Renee A. Andreotti, employed by Murnane, Conlin, White & Brandt Professional Association, attorneys licensed to practice law in this Court, with the office address of 444 Cedar Street, Suite 1800, St. Paul, Minnesota, 55101, declare that on August 18, 2004, I served the annexed Notice of Hearing and Motion for Relief from the Automatic Stay, Memorandum of Facts and Law, and proposed Order on each of the parties named below by mailing to each of them copies thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at St. Paul, Minnesota, addressed to each of them as follows:

ALLEN F BOIT
1482 STATE HIGHWAY 200
MAHNOMEN MN 56557

JEWEL A MARKS- BOIT
1482 STATE HIGHWAY 200
MAHNOMEN MN 56557

KEVIN T DUFFY
ATTORNEY AT LAW
PO BOX 715
THIEF RIVER FALLS MN 56701

MICHAEL J FARRELL
TRUSTEE
PO BOX 519
BARNESVILLE MN 56514

UNITED STATES TRUSTEE
1015 US COURTHOUSE
300 SOUTH FOURTH STREET
MINNEAPOLIS MN 55415

FIRST NATIONAL BANK
PO BOX 378
MAHNOMEN MN 56557

SBA
2719 NORTH AIR FRESNO DRIVE
SUITE 107
FRESNO CA 93727-1547

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

Dated: August 18, 2004

Signed /e/ Renee A. Andreotti
Renee A. Andreotti

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

In Re:	Chapter 13 Bky. Case No. 04-60443 DDO
Allen F. Boit and Jewel A. Marks-Boit,	**ORDER**
Debtors.	

The motion of Green Tree Loan Company, formerly known as Conseco Finance Loan Company, for an Order for relief from the automatic stay came on for hearing before the undersigned, one of the Judges of the above named Court, on September 28, 2004. Ricardo Figueroa, Esq., appeared for and on behalf of the moving party herein. Other appearances were duly noted.

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

IT IS HEREBY ORDERED:

The automatic stay in the above-referenced matter is hereby modified to permit Green Tree Loan Company, formerly known as Conseco Finance Loan Company, its successors or assigns in interest, to foreclose any and all interests it has in the Debtors' real property located in Mahnomen County, Minnesota, and legally described as follows:

The West Half of the Southeast Quarter of the Southeast Quarter (W½ of SE¼ of SE¼), Section Thirty-five (35), Township One Hundred Forty-five (145), North of Range Forty-two (42), West of the Fifth Principal Meridian.

Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

DATED: September _____, 2004.

BY THE COURT:

_____
THE HONORABLE DENNIS D. O'BRIEN
JUDGE OF UNITED STATES BANKRUPTCY COURT