

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re: CHAPTER 13  
Keith Lankford, Debtor Case No: 04-61075

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**NOTICE OF HEARING AND MOTION  
TO LIFT AUTOMATIC STAY**

**TO: THE DEBTOR AND ALL INTERESTED PARTIES AS SET FORTH IN  
THE ATTACHED AFFIDAVIT OF SERVICE:**

1. Farm Credit Services of Grand Forks, PCA (hereinafter "Farm Credit"), a secured creditor of Debtor hereby moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at **1:00 o'clock p.m., on Tuesday, October 26, 2004**, in Courtroom #2, 205 U.S. Post Office Courthouse Building, 118 So. Mill Street, Fergus Falls, MN.

3. Any response to this motion must be filed and delivered not later than 1:00, p.m., on October 25, 2004, which is twenty-four (24) hours before the time set for the hearing or filed and served by mail not later than October 23, 2004, which is three days before the time set for the hearing. **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. 505 and local rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on September 10, 2004. The case is now pending before this Court.

5. This motion arises under 11 U.S.C. §§15(a), 362(d) and FR.Bankr. p. 4001(a).

6. This motion is filed under Fed.R. Bankr. p. 9014 and local rules 9013-2 and 9013-3. Farm Credit requests that the Court lift the automatic stay existing by right of 11 U.S.C. §362(a) so as to permit Farm Credit to exercise its contract, state and federal law remedies to foreclose its security interest and to recover possession of and to sell the collateral securing the indebtedness

owed by Debtor to Farm Credit. Farm Credit requests this relief upon the following grounds and reasons:

(a) **Statement of Indebtedness.** As is more fully evidenced by Farm Credit's proof of claim filed herein, Farm Credit is a secured creditor and Farm Credit's claim is based upon a promissory note dated March 20, 2002, a copy of which is attached to Farm Credit's proof of claim filed herein. On or about March 1, 2004, Debtor defaulted under the terms and conditions of that promissory note by reason of Debtor's failure to pay when due the obligations evidenced by the promissory note. The following sums and amounts are owed by Debtor to Farm Credit:

Principal	\$60,039.00
Plus accrued interest to 6/28/04	\$ 1,056.98
Plus accrued interest to 9/10/04	\$ 657.27
Plus attorney's fees, court costs and Disbursements	<u>\$ 4,600.00</u>
Subtotal:	\$66,353.25

Plus per diem interest and late charges from and after 9/10/2004 at the rate of \$10.281 and thereafter at the option of Farm Credit at such other rate applicable from time to time in accordance with the terms of the promissory note; and

All expenses and costs of collection and other expenses reasonably incurred in enforcing any remedy available.

(b) **Collateral Securing Indebtedness.** The indebtedness owed Farm Credit by Debtor was secured by the terms of a Security Agreement dated March 20, 2002, which granted Farm Credit a security interest in certain of the Debtor's personal property and chattels, including but not limited to, the following, hereinafter collectively referred to as "Collateral":

All of the following items, whether now owned or in which was or is claimed an interest by Defendant, Keith Lankford, as of March 20, 2002 or thereafter or hereafter acquired, all additions or accessions thereto, and all products and proceeds thereof:

All **crops** growing, grown or to be grown on real estate in the State of Minnesota.

All harvested crops and all processed crops, whether or not produced by Debtors.

All **equipment**, all spare parts and special tools for such equipment, all motor vehicles and all fixtures.

Property specifically described here: Collateral described as follows, including but not limited to collateral located in Roseau, Pennington, Marshall, and Kittson Counties, Minnesota, including all now owned and after-acquired collateral wherever located or stored: including but not limited to all crop inventory and all inventory.

**Association Stock.** Debtors' stock, participation certificates, equity reserve and allocated surplus in the Secured Party or its parent association, as applicable, its successors and assigns.

**Proceeds.** To the extent not included in any of the subparagraphs herein as original Collateral, all proceeds of any of the described Collateral.

**Documents.** All documents of title, warehouse receipts, weight receipts, scale tickets, storage contracts (including CCC contracts) and deficiency payments covering or arising from any Collateral.

**Additions.** All additions, accessions, replacements and substitutions of or to any Collateral and all property of similar type or kind, including all offspring of livestock and poultry.

**Products.** All products of crops, livestock and poultry given as Collateral including eggs, milk, and wool and all products into which any of the Collateral has been or shall be manufactured, processed or assembled.

All items of equipment, tools, parts and motor vehicles identified in Schedule A attached hereto.

A crop proceeds check in the approximate sum of \$5,627.69 jointly payable to Debtor and Farm Credit and Mark L.V. Farms and perhaps others, a copy of which is evidenced and attached hereto, which proceeds check was issued by the Farmers Elevator Company of Alvarado.

Two multiple crop insurance checks, one in the amount of \$3,903 and the other in the amount of \$468, which checks are referenced in the September 13, 2004 letters issued by Real Community Insurance Service, which are attached, and which are proceeds from Farm Credit secured collateral, crops.

(c) **Marshall County MN Replevin Order.** That Farm Credit received the Order of the Marshall County Minnesota District Court granting it the right to take possession of its secured collateral on August 3, 2004. Since entry of that Order Farm Credit with the assistance of various county sheriffs' departments had begun to locate and to take possession of some of its secured collateral prior to receiving notice of the filing of the bankruptcy filing by Debtor. Farm Credit was able to obtain possession of two items of equipment.

(d) **Schedule A.** The collateral securing the indebtedness owed Farm Credit includes certain machinery, equipment and vehicles, all as more fully evidenced in the attached Schedule A, which is a portion of Keith Lankford's balance sheet. Debtor represented in writing to Farm Credit that he was the sole owner of that equipment and that he had the right to pledge the same as security to Farm Credit to secure any and all indebtedness owed Farm Credit by Debtor.

(e) **2003 Crop Proceeds Checks.** In violation of the terms and conditions of Debtor's loan agreements with Farm Credit, Debtor is in possession of and has failed and refused to turn over the three crop proceeds checks referenced by the exhibits attached hereto, which includes a check in the amount of \$5,627.69 by the Farmers Elevator Company of Alvarado, as proceeds from the sale of Farm Credit's crop collateral; and two checks in the amount of \$3,903 and \$468 issued by the Real Community Insurance Service as payments on federal crop insurance, which monies are also further collateral securing the indebtedness owed to Farm Credit. Debtor has failed to schedule these three checks in his bankruptcy petition.

(f) **Accounting of Disposition of Crop Proceeds.** In violation of the terms and conditions of Debtor's loan agreements with Farm Credit, Debtor has failed and refused to provide Farm Credit with an accounting of the disposition of his years 2003 and 2004 crops and any proceeds thereof.

(g) **Steiger Lion 1000 Tractor.** That Farm Credit is informed and believes that Debtor has unlawfully sold out of trust, without the permission of Farm Credit, and in violation of the terms of Debtor's written agreements with Farm Credit and Minnesota law, the following item of equipment in April of 2004: Steiger Lion 1000 Tractor, which tractor Debtor has more fully identified in Schedule A attached hereto and was pledged by Debtor as collateral securing the indebtedness Debtor owed to Farm Credit. Farm Credit is informed and

believes that this item of equipment was sold by Brinkley Auctions, Inc., of Idabel, Ok 74745 in April of 2004 for a total sales price of approximately \$45,692.00. Farm Credit is informed that approximately \$23,000 of the sale proceeds were paid to Case-IH who had a prior lien on the tractor to that of Farm Credit, but Farm Credit had the second priority lien position. Farm Credit did not receive as it should have the balance of the sale proceeds. Farm Credit is informed and believes Debtor unlawfully converted sale proceeds of approximately \$23,000.00. Debtor has converted the same for his own personal use and disposition which conversion constitutes an unlawful taking of Farm Credit's property. Farm Credit is informed that approximately \$10,000.00 of Farm Credits proceeds may have been paid over to John Deere Credit Services (JDCC) by Debtor without authorization of Farm Credit and in violation of Debtor's agreement with Farm Credit. JDCC did not have a security interest in or other lien right to any of the sale proceeds.

(h) **Missing and Unscheduled Equipment.** Debtor has also failed to state what has become of the certain of equipment **not** listed on his bankruptcy schedules, but which he represented to Farm Credit that he was the sole owner of. Those items included the following equipment:

1. 1 IH810 pickup head; 13 feet
2. 1 IH810 pickup head; Melroy P.U.
3. Field Roller/Packer 42'
4. Wishek Disc 842T
5. 1 Krause disc 2492 NR
6. 52' Field Cult.
7. IH 800 12btm Plow 12-18"
8. 1 Steiger 250 tractor
9. 1 IHC1486 tractor
10. White 8 Bottom Plow
11. JD 45' Fld Cult 1010

(i) **Equipment Claimed by Others.** Farm Credit has also been informed in the process of attempting to take possession of their secured collateral and as a part of a replevin action initiated in Minnesota State Court in Marshall County, Minnesota, that other third parties are now claimed ownership of the following items of equipment which Debtor had previously represented to Farm Credit that he was the sole owner of:

1. 1 IH810 pickup head; 13 feet
2. 1 IH810 pickup head; Melroy P.U.

3. Field Roller/Packer 42'
4. Wishek Disc 842T
5. 1 Krause disc 2492 NR
6. 52' Field Cult
7. IH 800 12btm Plow 12-18"
8. 1 Steiger 250 tractor
9. 1 IHC1486 tractor

(j) Farm Credit is informed and believes that Debtor is not providing adequate protection to Farm Credit because (i) he is not maintaining insurance on the farm equipment and motor vehicles that make up the collateral that secures the Farm Credit indebtedness, which Debtor has contractually agreed to do; and (ii) he has not adequately reported and scheduled the farm equipment or maintained the same.

(k) Excluding the value of the equipment which other third parties are not claiming an interest in and utilizing the valuation of given property by other who may have a security interests in certain items that is prior to Farm Credit's, Farm Credit estimates that the value of the collateral which should be available to satisfy the indebtedness owed Farm Credit's should be approximately \$60,000.00.

7. Cause exists for granting Farm Credit relief from the automatic stay in this matter for the following reasons:

(a) Debtor has not and is not expressing the intent to provide adequate protection to Farm Credit for the use of their secured collateral.

(b) That Debtor has no equity in the property securing the indebtedness owed Farm Credit and the property is not necessary for the completion of the Plan of Reorganization.

(c) That Debtor is not proceeding in good faith in that Plaintiff has failed to make an accurate and complete disclosure in his bankruptcy schedules, including but not limited to, willing to disclose location of crop proceeds checks he should be in possession of and the disposition and transfer of Farm Credit security to Debtor filing his bankruptcy petition.

(d) Such other and further reasons as are set forth in the memorandum submitted in support hereof.

8. This motion is based upon the pleadings, records and files herein, and is further based upon the Memorandum of Law and Fact and exhibits that have been or will be submitted in support of the motion.

9. Notice of Witnesses: Farm Credit anticipates that they may offer the testimony of Randy Skjerven, Risk Asset Manager, Farm Credit Services, Grand Forks, North Dakota, on such matters as more fully discussed and set forth herein and in the Memorandum of Law and Fact filed herewith.

WHEREFORE, Farm Credit prays for relief as follows:

(1) For an order granting Farm Credit relief from the automatic stay of 11 U.S.C. §362(a) of the Bankruptcy Code and granting Farm Credit the right to exercise any and all of its rights under state and federal law and under the terms of its security agreement with Debtor, including, right to take possession of and to sell the collateral securing Debtor's indebtedness to Farm Credit;

(2) For an order providing that the Order Lifting Stay shall be immediately enforceable and Farm Credit may immediately implement the order granting relief from automatic stay and the automatic stay provisions of Bankruptcy Rule 4001(a)(3) shall not apply.

Dated this 5<sup>th</sup> day of October 2004.

\_\_\_\_\_/S/  
ALLEN J. FLATEN, (MN ID #156814)  
Zimney Foster P.C.  
Bremer Financial Center, Suite 200  
3100 South Columbia Road, PO Box 13417  
Grand Forks, ND 58208-3417  
Phone: (701) 772-8111

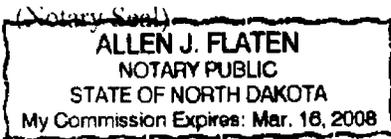
VERIFICATION

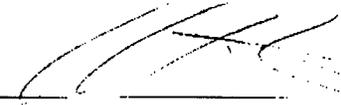
I, Randy Skjerven, Director of Asset Management for Farm Credit Services of Grand Forks, PCA the duly appointed agent for Farm Credit Services of Grand Forks, PCA, the moving parties named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing matters are true and correct according to the best of my knowledge, information and belief.

  
Randy Skjerven

Executed on the 5<sup>th</sup> day of October 2004.

Subscribed and sworn to be fore me this 5<sup>th</sup> October 2004.



  
\_\_\_\_\_

Keith Lankford (FIELD INSP.)

Sch. 23 - Machinery, Equipment, & Vehicles

Qty	Item & Brand	Size & Type	Condition	Year	Serial #
1	CASEIH 1660 COMBINE		G	1989	JJC0037775
1	CASEIH 1660 COMBINE		G	1989	JJC0038219
1	CASE 1020-HEAD 25' Flex		G	1995	JJC0218404
1	CaseIH 1020 Head 25' Flex		G	1989	JJC0060440
1	IH 810 Pickup Head 13'	IH p/u	G		
1	IH 810 Pickup Hd	Melroe p.u	G		
1	Field ROLLER/PACKER	42'	G	1998	
1	DODGE SPRAY PKLIP	60' Boom	G	1989	
1	FLEXI COIL AIR SEEDER 39'		G		0011801
1	CASEIH CHISEL PLOW 5600		G	1996	JAG0001841
1	WISHEK DISC 842T		G	1998	
1	KRAUSE DISC 2492NR		G	1999	
1	CASEIH Field Cultivator 4900		G	1985	JAG0066812
1	52' Field Cult.		G	1993	JAG0066812
1	IH 800 12btm Plow	12- 18"	G		
1	FlexiCoil HarrowPacker 60:				
1	Brandt HD Harrow 70' Andersen				
1	White 8 Bottom Plow		F		
1	JohnDeere 45' Fld Cult 1010	w/narrow	G		
1	TIMPTE HOPPER TRAILER 42'		G	1989	IDH0020KB073241
2	TRAILER		G	1999	
1	STEIGER LION 1000 TRACTOR	tr50%	G	1990	07013
1	VERSATILE 935 TRACTOR	tr60%	G	1981	107251
1	STEIGER 250 Tractor	T40%	G	1976	
1	IHC 1466 TRACTOR		G		
1	Freightliner 120 Semi-Truck		G	1995	
1	CHEVROLET 3500 PICKUP	dually	G	1995	LC39F5SE14168:
1	GMC 2500 PICKUP E/C 4x4	Diesel100,0	G	2001	
1	FREIGHTLINER SEMI-TRUCK		G	1995	
1	INTERNATIONAL COE SEMI-TRUCK		G	1978	
1	GMC SPREADER TRUCK		G	1985	

SCHEDULE A



**RURAL COMMUNITY  
INSURANCE SERVICES**  
3501 Thurston Avenue  
Anoka, MN 55303  
(800)328-9143

9/13/2004

KEITH LANKFORD  
PO BOX 117  
GOODRIDGE MN 56725

2003 MPC1 Loss Check

Check Number 877737 Policy Number 2003 22-836-681464 Claim Number 917784-00

On 4/14/2004 we issued a check to you in the amount of \$3,903.00.

As of 8/31/2004 this check is still outstanding. If this check has been lost or destroyed, please sign and return the form on the bottom of this letter to our office in the envelope we have provided. We will then stop payment on the original check and reissue it to you.

Please contact our office within the next 30 days regarding the status of this check. The Federal Crop Insurance Corporation stipulates that these funds are to be returned to them if the check is not cashed within one year from the date of issuance.

Thank you for your prompt attention in this matter. If we can be of any assistance, please contact our Anoka Office at (800) 328-9143 and request to speak to Sharon Peters ext 2178.

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Payee Name	KEITH LANKFORD	Claim Number	917784-00
Policy Number	2003 22-836-681464	Check Amount	\$3,903.00
Check Number	877737	Date Issued	4/14/2004

I certify that the check listed above is not in my possession and that to the best of my knowledge is lost or destroyed. I further certify that I have not endorsed, negotiated, or transferred it and that I have received no payment under it. I request of Rural Community Insurance Services to issue a new check to replace it and in consideration, thereof, agree to return the original check if and when found to Rural Community Insurance Services.

Additional Comments: \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

FCS OF GRAND FORKS FLCA 222649  
208 THIRD AVE NW  
ROSEAU MN 56751



**RURAL COMMUNITY  
INSURANCE SERVICES**  
3501 Thurston Avenue  
Anoka, MN 55303  
(800)328-9143

9/13/2004

KEITH LANKFORD  
PO BOX 117  
GOODRIDGE MN 56725

2003 MPC I Loss Check

Check Number 877789 Policy Number 2003 22-836-681464 Claim Number 917838-00

On 4/15/2004 we issued a check to you in the amount of \$468.00.

As of 8/31/2004 this check is still outstanding. If this check has been lost or destroyed, please sign and return the form on the bottom of this letter to our office in the envelope we have provided. We will then stop payment on the original check and reissue it to you.

Please contact our office within the next 30 days regarding the status of this check. The Federal Crop Insurance Corporation stipulates that these funds are to be returned to them if the check is not cashed within one year from the date of issuance.

Thank you for your prompt attention in this matter. If we can be of any assistance, please contact our Anoka Office at (800) 328-9143 and request to speak to Sharon Peters ext 2178.

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Payee Name	KEITH LANKFORD	Claim Number	917838-00
Policy Number	2003 22-836-681464	Check Amount	\$468.00
Check Number	877789	Date Issued	4/15/2004

I certify that the check listed above is not in my possession and that to the best of my knowledge is lost or destroyed. I further certify that I have not endorsed, negotiated, or transferred it and that I have received no payment under it. I request of Rural Community Insurance Services to issue a new check to replace it and in consideration, thereof, agree to return the original check if and when found to Rural Community Insurance Services.

Additional Comments: \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

FCS OF GRAND FORKS FLCA ~~22-2619~~  
208 THIRD AVE NW  
ROSEAU MN 56751



*Attn: Randy*  
*From Bruce Cl*

**FARMERS ELEVATOR CO. OF ALVARADO**

P.O. BOX 952 • ALVARADO, MN 56710  
PHONE: (218) 965-4812

**RURAL AMERICAN BANK**  
528 N. First St.  
Warren, MN 56762-0025

No. 005600

**GRAIN DRAFT**

75-1463  
912

Date: 6/30/84

Check No. 01 02 005600

Pay to the order of: LANKFORD, KEITH & FARM CREDIT SERVICE & MARK HOLBY FARMS & JAMES C MI

-----FIVE THOUSAND SIX HUNDRED TWENTY SEVEN and 67/100-----DOLLARS \$5,627.67

LANKFORD, KEITH  
PO BOX 117  
BANDRIDGE, MN 56725

FARMERS ELEVATOR CO. OF ALVARADO

*Bruce Chevrolet L.L.*

⑈005600⑈ ⑆091214630⑆ ⑈10⑈245⑈825⑈

FARMERS ELEVATOR CO. OF ALVARADO

DATE: 6/30/84

CHECK NO. 005600

SELLER/OWNER	DOCUMENT NUMBER	GRAIN	QUANTITY	PRICE	GROSS AMOUNT	TOTAL DESCRIPTION	TOTAL AMOUNT
LANKFORD, KEITH	IA.S. 01-04-0086-00-001	MR	11,635.84	3.25001	38,011.4811	GRAIN SOLD	42,775.91
LANKFORD, KEITH	IA.S. 01-04-0322-00-001	MR	614.62	3.25001	1,997.5211	ACCOUNTS RECEIVABLE	1,369.70
LANKFORD, KEITH	IA.S. 01-05-0035-00-001	MR	24.70	3.25001		ADVANCE <i>ccc loan</i>	35,748.82
LANKFORD, KEITH	IA.S. 21-01-0573-00-001	FR	1,513.13	1.77551	2,666.6211	BARLEY COMMISSION	15.13
						DRYING CHARGE	14.51

NET CHECK: 5,627.67

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re: CHAPTER 13  
Keith Lankford, Debtor Case No: 04-61075

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**MEMORANDUM OF LAW AND FACT  
IN SUPPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY**

Farm Credit Services of Grand Forks, PCA (hereinafter "Farm Credit"), a secured creditor of Debtor, submits the following memorandum of fact and law in support of its motion for relief from automatic stay:

FACTS

The facts that constitute the basis for this memorandum are set forth in paragraph 6 and its subparts of Farm Credit's Motion. As well, the facts and matters set forth in Farm Credit's proof of claim in this matter are also incorporated herein.

ARGUMENT

Section 362(d) of Title 11 of the Bankruptcy Code provides in part as follows:

- (d) 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;
    - (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.
1. **Debtor is not providing adequate protection to Farm Credit for its secured collateral.**

**Cash Collateral: Three Crop Proceeds Checks.** As is more fully evidenced by the attachments to Farm Credit's motion for lift of stay, Debtor is in possession of three cash crop proceeds checks, which Farm Credit unquestionably has first priority right to. Pursuant to terms of Debtor's agreements with Farm Credit, Debtor is obligated to turn those checks over to Farm Credit. However, Debtor has failed and refused to do so. Additionally, Debtor has failed to act in good faith in filing his petition for bankruptcy and in filing his proposed Chapter 13 Plan, because Debtor has not identified those cash monies and has failed to address the disposition thereof. Debtor having failed and refused to surrender this cash, Farm Credit is not receiving adequate protection of its interests in such monies.

**Equipment, Motor Vehicle, and Crop Collateral.** Additionally, Debtor is not providing Farm Credit with adequate protection relative to its equipment collateral. "The requirements of adequate protection "require that the secured creditor receive payments under the plan at least equal to the present value of its claim and that debtor be able to make all those payments." *In Re Hannah*, 912 F.2d 945, 951 (8<sup>th</sup> Cir. 1990). A secured creditor does not receive adequate protection when "the plan to reduce the principal amount of the claim will not keep pace with the depreciation of the lien collateral." *Id.*

First, Debtor has failed to state what has become of the certain of equipment not listed on his bankruptcy schedules, but which he represented to Farm Credit that he was the sole owner of. Those items included the following equipment:

1. 1 IH810 pickup head; 13 feet
2. 1 IH810 pickup head; Melroy P.U.
3. Field Roller/Packer 42'
4. Wishek Disc 842T
5. 1 Krause disc 2492 NR
6. 52' Field Cult
7. III 800 12btm Plow 12-18"
8. 1 Steiger 250 tractor
9. 1 IHC1486 tractor
10. White 8 Bottom Plow
11. JD 45' Fld Cult 1010

Further, Farm Credit is informed and believes that Debtor is not maintaining, as he has agreed, to keep the equipment and motor vehicles that secures the Farm Credit indebtedness insured. As well, Debtor has failed and refused to provide Farm Credit with an accounting of the

disposition of his 2003 and 2004 crops and the proceeds thereof as he contractually obligated to do. Debtor is thus not providing Farm Credit adequate protection relative to these items making up Farm Credit's security.

Secondly, Debtor is not providing Farm Credit adequate protection relative to the items of equipment and motor vehicles that plaintiff proposes to keep possession of and to use during the three year term of his plan. Farm Credit submits that the equipment and motor vehicles that Debtor proposes to maintain possession of and to use will depreciate in value as a result of time and use faster than monies that defendant proposes to pay to Farm Credit over time. Thus, Debtor intends not to maintain Farm Credit status quo during the term of the plan and will not accordingly provide adequate protection to Farm Credit.

Thirdly, Debtor presumably intends to use Farm Credit's collateral to fund some of the plan. However, Debtor makes no provision or reference to an allowance for a priority administrative claim to Farm Credit for the use of its equipment. This also evidences that Debtor does not intend to provide adequate protection to Farm Credit.

**2. The collateral securing the indebtedness owed Farm Credit is not necessary to an effective reorganization.**

In a Chapter 13 case, an effective reorganization means a probability that the Chapter 13 Plan as proposed can be funded in a way which will cure the arrearages of the creditors. The antithesis of such capability provides the establish a basis for relief from the automatic stay under Sections 362(d)(1) & (2). 9B *Am.Jur.* 2<sup>nd</sup>, Bankruptcy §1738, citing *In re Ashton*, 63 B.R.244 (Bankr.D.N.D. 1986). There must be a reasonable possibility of a successful reorganization within a reasonable time in order for the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Associates*, 484 U.S. 365 (1988).

Farm Credit believes that Debtor's Chapter 13 Plan of Reorganization is not confirmable for a number of reasons. First, the plan does not provide for Farm Credit to receive payments at least equal to the present value of its claim. Debtor has grossly misrepresented the arrearages of Farm Credit's claim and the value of the collateral securing the Farm Credit debt. Further, Farm Credit also believes that Debtor may also have misrepresented the value of other creditor's claims in order to given at least a facial appearance a funding capability. The proof of claims filed by New Holland Credit documents also

document further misrepresentation by the Debtor here. The cash flow proposed by Debtor will certainly not sustain the curing of Farm Credit's actual claim amount. As well, Farm Credit believes that there is an absence of evidence show an ability on the part of Debtor to generate the gross income needed to produce the kind of cash flow necessary to fund the plan as proposed and certainly not sufficient income to pay off all of the acreages that Debtor has. Thus, the plan is not confirmable and accordingly, Farm Credit's collateral is not necessary to an effective reorganization.

**3. Cause exists for Lifting of the stay because of Debtor's lack of good faith and because he has engaged in fraudulent or felonious pre-filing conduct.**

"A debtor's lack of good faith in filing a bankruptcy petition may constitute "cause" for relief from the automatic stay. 9B *Am. Jur. 2d* § 1712 (1999). As is set forth in the Facts contained in paragraph 6 of Farm Credit's motion, Debtor has made material misrepresentation in writings and materials submitted to Farm Credit relative to the ownership of collateral presented as purported security for the indebtedness owed Farm Credit. Further, Debtor has failed and refused to identify as property owned by him in his bankruptcy petition, but which he represented as being owned by him in his pre-petition loan document. Also, Debtor has grossly misstated the acreages owed Farm Credit and its claim.

For these and such other and further reasons as may be presented at the hearing on this matter, Farm Credit requests that the Court grant its motion for lifting of the automatic stay.

Dated this 5<sup>th</sup> day of October 2004.

\_\_\_\_\_/s/\_\_\_\_\_  
ALLEN J. FLATEN, (MN ID #156814)  
Zimney Foster P.C.  
Bremer Financial Center, Suite 200  
3100 South Columbia Road, PO Box 13417  
Grand Forks, ND 58208-3417  
Phone: (701) 772-8111



Case Credit  
PO Box 0507  
Carol Stream, IL 60132-0507

Kevin Duffy  
PO Box 715  
Thief River Falls, MN 56701

Michael J. Farrell  
PO Box 519  
Barnsville, MN 56514

Keith Lankford  
PO Box 115  
Wannaska, MN 56761

Community First National Bank  
14-22 Central Ave.  
Elbow Lake, MN 56531

Robert Allen  
John Deere Credit  
PO Box 6600  
Johnston, IA 50131-6600

New Holland Credit Co.  
233 Lake Ave.  
Racine, WI 53403

and depositing the same, with postage prepaid, in the United States mail at Grand Forks, North Dakota.

/s/ \_\_\_\_\_  
Roxanne L. Flom

Subscribed and sworn to before me on October 5, 2004.

(NOTARIAL SEAL)

/s/ Janelle Klava  
NOTARY PUBLIC, NORTH DAKOTA  
My Commission Expires: 12/10/08