

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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Case No. 02-83519 RJK  
Chapter 13

In Re:

John P. Engelking,

Debtor.

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**NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY**

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TO: Debtor John P. Engelking; his attorney Stephen L. Heller; United States Trustee; and all other entities specified in Local Rule 1204 (a):

1. AmeriCredit Financial Services, Inc., (“AmeriCredit”), a secured creditor in this Chapter 13 proceeding, by and through duly authorized and undersigned attorneys, moves the Court for the relief requested below, and gives notice of hearing.

2. The Court will hold a hearing on this motion on October 14<sup>th</sup> 2004, at 2:00 p.m., before the Honorable Robert J. Kressel, United States Bankruptcy Judge, in Courtroom No. 8 West United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415.

3. Any response to this motion must be filed and delivered not later than October 11<sup>th</sup> 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail no later than October 5<sup>th</sup> 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays).

UNLESS A RESPONSE OPPOSING THIS 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, Bankruptcy Rule 5005, and Local Rule 1070-1. This is a core proceeding. The petition commencing this Chapter 13 case was filed on October 16, 2002. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Bankruptcy Rule 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 5005-4, 9006-1, 9013-1 and 9017-1. AmeriCredit requests relief from the automatic stay under § 362 of the Bankruptcy Code to foreclose its security interest in certain personal property of the debtor as defined below.

6. On March 28, 2002 the debtor, John P. Engelking, executed a promissory note and security agreement in favor of AmeriCredit, in the original principal amount of \$10,944.55, plus interest thereon at the stated rate, payable according to the terms and conditions therein, a copy of which is attached hereto as **Exhibit "A"**. Security for the promissory note consists of a security interest in a motor vehicle, a 1998 Chevrolet Venture, VIN # 1GNDX03E6WD110371. Proof of perfection of the security interest of AmeriCredit is attached hereto as **Exhibit "B"**.

7. The Debtor has defaulted in payments to AmeriCredit to be made outside the confirmed Plan. The promissory note is in default for failure to make payments when due since December 12, 2002, a delinquency in the approximate amount of \$6,685.40. As of October 16, 2002, the amount due was a payoff balance of \$13,005.04. On information and belief, the value of the vehicle is \$6,425.00 and the debtor has no equity in the vehicle

8. The loan is in default for failure to make payments when due. AmeriCredit seeks relief from the automatic stay to foreclose its personal property security interest in the vehicle.

9. Pursuant to 11 U.S.C. § 362(d)(1), a creditor may be granted relief from the automatic stay for cause, including lack of adequate protection. AmeriCredit believes that cause exists to grant it relief from the automatic stay to foreclose its personal property security interest, for the following reasons:

a. AmeriCredit has not been offered and is not being provided with adequate protection for its interest in the vehicle;

b. The vehicle subject to the security interest of AmeriCredit continues to depreciate and decline in value;

c. AmeriCredit has been unable to verify current proof of insurance on the vehicle; and

d. The debtor has stopped making payments to AmeriCredit.

10. Pursuant to 11 U.S.C. § 362(d)(2), a creditor may be granted relief from the automatic stay, if there is no equity in the property which is the subject of the motion, and property is not necessary for an effective reorganization. Here, the debtor has no equity in the vehicle that is the subject of this motion, and the vehicle is not necessary for an effective reorganization in this Chapter 13 proceeding.

11. If any testimony is necessary on any of the facts relative to this motion, testimony will be given by Tommie Greer, or some other representative of the Movant, AmeriCredit Financial Services, Inc..

WHEREFORE, AmeriCredit requests entry of an Order granting the relief from the automatic stay of 11 U.S.C. § 362, to allow it to foreclose its personal property security interest described above, and for such other and further relief as the court deems just and equitable under

the circumstances.

Dated: September 16, 2004

RIEZMAN BERGER, P.C.

/e/ Marilyn J. Washburn  
Marilyn J. Washburn, #0324140  
7700 Bonhomme Ave., 7th Floor  
St. Louis, MO 63105  
(314) 727-0101  
FAX (314) 727-1086  
Attorneys for AmeriCredit

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

Case No. 02-83519 RJK  
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**MEMORANDUM OF LAW**

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**INTRODUCTION**

AmeriCredit Financial Services, Inc., (“AmeriCredit”) has made a motion for relief from the automatic stay. AmeriCredit incorporates herein the facts set forth in the notice of hearing and motion for relief from stay.

There is one loan that is the subject of this motion secured by a security interest in a motor vehicle. The loan is in default for failure to make payments when due and AmeriCredit has been unable to verify current proof of insurance. AmeriCredit seeks relief from the automatic stay to foreclose its personal property security interest. There is no equity in the vehicle.

**ARGUMENT**

Pursuant to 11 U.S.C. § 362(d)(1), a secured creditor may be granted relief from the automatic stay, including lack of adequate protection. The motion, filed by AmeriCredit, for relief from the automatic stay demonstrates cause for relief from the stay for all reasons set forth in the motion. In the aggregate, these circumstances demonstrate cause for relief from the automatic stay. **United Savings Assn. of Texas v. Timbers of Innwood Forest Assoc. Ltd. (In re Timbers of Innwood Assoc. Ltd.)**, 484 U.S. 365 (1988).

Also, there is little or no equity in the vehicle that is the subject of this motion and the vehicle is not necessary for an effective reorganization, which allows the stay to be lifted pursuant to 11 U.S.C. § 362(d)(2). **In re Anderson**, 913 F.2d 530, 532 (8th Cir. 1990).

### **CONCLUSION**

Based on the foregoing, AmeriCredit requests that the Court issue an Order lifting and terminating the automatic stay provided by 11 U.S.C. § 362(a) to permit AmeriCredit to enforce and foreclose its personal property security interest.

DATED: September 16, 2004

RIEZMAN BERGER, P.C.

**/e/ Marilyn J. Washburn**  
Marilyn J. Washburn, #0324140  
7700 Bonhomme Ave., 7th Floor  
St. Louis, MO 63105  
(314) 727-0101  
FAX (314) 727-1086  
Attorneys for AmeriCredit

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

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Marilyn J. Washburn, an attorney licensed to practice law in this court, and employed by Riezman Berger, P.C., with an office address of 7700 Bonhomme Avenue, 7<sup>th</sup> Floor, St. Louis, Missouri 63105, declares that on the date stated below, I served a **Notice of Hearing for Relief from Stay, Memorandum of Law and Proposed Order** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class postage prepaid and depositing same in the post office at St. Louis, Missouri, addressed to each of them as follows:

(Debtor's Attorney)  
Stephen L. Heller  
606 25th Avenue S. Suite 110  
St. Cloud, MN 56301

(Chapter 13 Trustee)  
Jasmine Z. Keller  
12 South 6th Street, Suite 310  
Minneapolis, MN 55402

(Debtor)  
John P. Engelking  
17288 Red Cedar Road  
Cold Spring, MN 563209783

Office of the U.S. Trustee  
1015 U.S. Courthouse  
300 South 4th Street  
Minneapolis, MN 55415

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

Executed: September 16, 2004

Signed: /e/ Marilyn J. Washburn

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re:

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**ORDER**

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The above entitled matter before the Court for hearing on \_\_\_\_\_, 2004, on the motion of AmeriCredit Financial Services, Inc., (“AmeriCredit”), seeking relief from the automatic stay of 11 U.S.C. § 362(a). Appearances are as noted in the Court’s record.

Based on the proceedings had on said date, the statement of counsel and all the files and records herein, the Court now find that cause exists entitling AmeriCredit to relief from the automatic stay.

NOW, THEREFORE, **IT IS HEREBY ORDERED** that:

1. The automatic stay is immediately terminated as to AmeriCredit and AmeriCredit is authorized to proceed with its legal remedies according to state law as to the subject motor vehicle,

a 1998 Chevrolet Venture, VIN # 1GNDX03E6WD110371.

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

DATED at Minneapolis, Minnesota, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

BY THE COURT:

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Robert J. Kressel  
United States Bankruptcy Judge

<b>RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT</b>	Seller	WEST METRO BUICK PONTIAC GMC HIGHWAY 55 EAST BUFFALO, MN 55313	BUYER	JOHN PAUL ENGELKING 17288 RED CEDAR ROAD COLD SPRING MN 56320
	No. Date	03/28/02	"We" and "us" mean the Seller above, its successors and assigns. "You" and "your" mean each Buyer above, and guarantor, jointly and individually.	

**SALE:** You agree to purchase from us, over time, the Motor Vehicle (Vehicle) and services described below. Your purchase is subject to the terms and conditions of this contract and security agreement (Contract). The Vehicle is sold in its present condition, together with the usual accessories and attachments.

Description of Motor Vehicle Purchased	Year Make Model	98 CHEVROLET VENTURE	VIN Lic. No./Year	1GNDX03E6WD110371	Other:
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**SECURITY:** To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessories, attachments, accessories, and equipment placed in or on the Vehicle, together called Property, and proceeds of the Property. You also assign to us and give us a security interest in proceeds and premium refunds of any insurance and service contracts purchased with this Contract.

**PROMISE TO PAY AND PAYMENT TERMS:** You promise to pay us the principal amount of \$ 10944.55, plus finance charges accruing on the unpaid balance at the rate of 19.75% per year from today's date until paid in full. Finance charges accrue on a 365 day basis. You agree to pay this Contract according to the payment schedule and late charge provisions shown in the TRUTH IN LENDING DISCLOSURES. You also agree to pay any additional amounts according to the terms and conditions of this Contract.

**LOAN ADMINISTRATION FEE:** You agree to pay an additional, nonrefundable, loan administration fee of \$ 25.00 that will be  paid in cash.  paid pro rata over the contract term.  withheld from the proceeds (if this amount is not secured, the amount included in the principal sum).

**DOWN PAYMENT:** You also agree to pay, or apply to the Cash Price, on or before today's date, any cash payment or net trade-in value described in the ITEMIZATION OF AMOUNT FINANCED.  You agree to make deferred payments as part of the cash down payment as reflected in your Payment Schedule.

**TRUTH IN LENDING DISCLOSURES**

<b>ANNUAL PERCENTAGE RATE</b> The cost of your credit as a yearly rate.	<b>FINANCE CHARGE</b> The dollar amount the credit will cost you.	<b>AMOUNT FINANCED</b> The amount of credit provided to you or on your behalf.	<b>TOTAL OF PAYMENTS</b> The amount you will have paid when you have made all scheduled payments.	<b>TOTAL SALE PRICE</b> The total cost of your purchase on credit, including your down payment of
19.75%	\$ 5100.41	\$ 10944.55	\$ 16044.96	\$ 17044.96

**Payment Schedule:** Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
48	334.27	MONTHLY BEGINNING: 05/12/02

**Security:** You are giving a security interest in the Motor Vehicle purchased.  
 **Late Charge:** If a payment is more than 10 days late, you will be charged \$ 5 OR 5% OF THE MONTHLY PAYMENT, WHICHEVER IS GREATER.  This amount may increase so as to always be the highest amount allowed by law under Minn. Stat. § 47.59.

**Prepayment:** If you pay off this Contract early, you will not have to pay a penalty.  
 If you pay off this Contract early, you will not be entitled to a refund of part of the loan administration fee.

**Contract Provisions:** You can see the terms of this Contract for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.

**CREDIT INSURANCE:** Credit life, credit disability (accident and health), and any other insurance coverage quoted below, are not required to obtain credit and we will not provide them unless you sign and agree to pay the additional premium. If you want such insurance, we will obtain it for you (if you qualify for coverage). We are quoting below ONLY the coverages you have chosen to purchase.

JOHN PAUL ENGELKING

Credit Life: Insured  
 Single  Joint Prem. \$ 198.87 Term 48

Credit Disability: Insured  
 Single  Joint Prem. \$ N/A Term \_\_\_\_\_

**ITEMIZATION OF AMOUNT FINANCED**

Vehicle Price (incl. sales tax of \$ <u>108.18</u> )	\$ 11603.18
Service Contract, Paid to:	\$ N/A
Cash Price	\$ 11603.18
Manufacturer's Rebate	\$ N/A
Cash Down Payment	\$ 1000.00
Deferred Down Payment	\$ N/A
a. Total Cash/Rebate Down	\$ 1000.00
b. Trade-In Allowance	\$ N/A
c. Less: Amount owing	\$ N/A
Paid to:	
d. Net Trade-In (b. minus c.)	\$ N/A
e. Net Cash/Trade-In (a. plus d.)	\$ 1000.00
Down Payment (e.; disclose as \$0 if negative)	\$ 1000.00
Unpaid Balance of Cash Price	\$ 10603.18
Paid to Public Officials - Filing Fees	\$ 117.50
Insurance Premiums*	\$ 198.87
Amount to Finance line e. (if e. is negative)	\$ N/A
To:	\$ N/A
To: DOCUMENT FEE	\$ 25.00
To:	\$ N/A
Total Other Charges/Amounts Pd. to Others	\$ 341.37
Less: Prepaid Finance Charges	\$ N/A
Amount Financed	\$ 10944.55

Your signature below means you want (only) the insurance coverage(s) quoted above. If none are needed, you have declined any coverages we offered.  
08/30/50

Buyer John Paul Engelking d/o/b Buyer \_\_\_\_\_ d/o/b \_\_\_\_\_

**PROPERTY INSURANCE:** You must insure the Property securing this Contract. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. The collision coverage deductible may not exceed \$ 500.00. If you get insurance from or through us you will pay \$ N/A for \_\_\_\_\_ of coverage.

This premium is calculated as follows:  
 \$ \_\_\_\_\_ Deductible, Collision Coverage \$ N/A  
 \$ \_\_\_\_\_ Deductible, Comprehensive Cov. \$ N/A  
 Fire-Theft and Combined Additional Coverage \$ N/A  
 \$ \_\_\_\_\_

**Liability insurance coverage for bodily injury and motor vehicle damage caused to others is not included in this Contract unless checked and indicated.**

**MOTOR VEHICLE SERVICE CONTRACT:** With your purchase of the Vehicle, you agree to purchase a Motor Vehicle Service Contract to cover \_\_\_\_\_

This Service Contract will be in effect for \_\_\_\_\_

**ASSIGNMENT:** This Contract and Security Agreement is assigned to America Credit Financial Services, INC, the Assignee, phone 800-365-3635. This assignment is made  under the terms of a separate agreement.  under the terms of the ASSIGNMENT BY SELLER on page 2.  This assignment is made with recourse.  
 Seller: By [Signature] Date \_\_\_\_\_

\*We may retain or receive a portion of this amount.

**NOTICE TO BUYER**

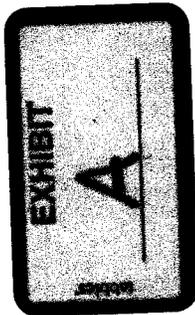
(1) Do not sign this agreement before you read it or if it contains any blank spaces. (2) You are entitled to a completely filled-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge. (4) IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.

BY SIGNING BELOW BUYER AGREES TO THE TERMS ON PAGES 1 AND 2 OF THIS CONTRACT AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT.

Buyer: John Paul Engelking 03/28/02  
 Signature \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Seller: By [Signature] (page 1 of 2)  
 MOTOR VEHICLE - NOT FOR MANUFACTURED HOMES



MINNESOTA DEPARTMENT OF PUBLIC SAFETY  
DRIVER & VEHICLE SERVICES DIVISION  
445 MINNESOTA ST., ST. PAUL, MN 55101  
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

ENGELKING JOHN PAUL  
17288 RED CEDAR RD  
COLD SPRING MN 56320

First Class  
U.S. Postage  
**PAID**  
Permit No. 171  
St. Paul, MN

\*

ELC342

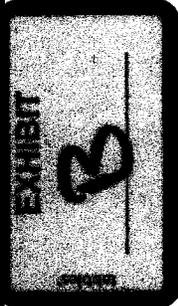
1ST SECURED PARTY

**LIEN HOLDER**

98 Year	CHEV Make	ESVTR Model	H1150P035 Title NR.
1GNDX03E6WD110371 VIN		03/28/02 Security Date	NO Rebuilt

RETAIN THIS DOCUMENT - See reverse  
side of this form for removing this lien.

AMERICREDIT FINANCIAL SVS  
PO BOX 182673  
ARLINGTON TX 76096-2673



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Case No. 02-83519 RJK

Chapter 13

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Debtor.

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VERIFICATION

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I, Marissa Olson, an employee of AmeriCredit Financial Services, Inc. named in the foregoing Notice of Hearing and Motion for Relief from Stay, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

DATED: September 8 2004.

SIGNED: Marissa Olson