

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

CHAPTER 13 CASE

Fontal Neville Turner,
SSN: XXX-XX-5710
and
Brooke Anne Turner
SSN: XXX-XX-0512

CASE NO. 04-32764

Debtors.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: The Debtor(s) and other entities specified in Local Rule 9013-3(a).

1. Caberallo, LLC, (hereinafter "Secured Creditor"), by its undersigned attorney, moves the court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on November 1, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, before the above entitled Court located at U.S. Bankruptcy Court, 200 U.S. Courthouse, Court Room 228B, 316 North Robert Street, St. Paul, Minnesota 55102.

3. Any response to this motion must be filed and delivered not later than October 27, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than 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 motion pursuant to 28 U.S.C. §§157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on May 6, 2004. The case is now pending in this Court.

5. This Motion arises under 11 U.S.C. §362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 through 3019-1. Movant requests relief from the automatic stay with respect to the subject property. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$126,356.55, as evidenced by that certain Contract for Deed dated March 19, 2004, a copy of which is attached hereto as Exhibit A, together with interest thereon. Said Contract for Deed was executed by Flontal Turner and Brook Turner. The property is located in Ramsey County, Minnesota and is legally described as follows to-wit:

Lot 17, Block 16, Stinson's Addition to the City of St. Paul.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

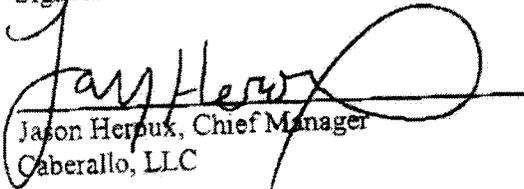
9. Pursuant to 11 U.S.C. §362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This Secured Creditor's interest in the property is not adequately protected where, as of September 30, 2004, Debtor is delinquent in the making of monthly payments as required for the months of September 1, 2004 through the present date, in the amount of \$1,243.56 accruing late charges and attorneys' fees and costs of \$97.16. Debtor has failed to make any offer of adequate protection.

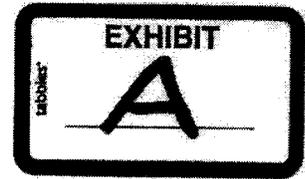
VERIFICATION

I, Jason Heroux, Chief Manager of Caberallo, LLC, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: October 4, 2004

Signed:


Jason Heroux, Chief Manager
Caberallo, LLC



55-M CONTRACT FOR DEED
Individual(s) to Individual

Date: March 19, 2004

THIS CONTRACT FOR DEED (the "Contract") is made on the above date by Caberallo, LLC, a Limited Liability Company Seller (whether one or more), and Flontal Turner and Brook Turner, husband and wife Purchasers, (whether one or more)

Seller and Purchasers agree to the following terms:

1. **PROPERTY DESCRIPTION.** Seller hereby sells, and Purchasers hereby buys, real property in Ramsey County, Minnesota, described as follows:

Lot 17, Block 16, Stinson's Addition to the City of Saint Paul, Ramsey County, Minnesota.

together with all hereditaments and appurtenances belonging thereto (the "Property"). Unless otherwise specified, Seller hereby delivers possession of the Property to Purchasers on the date hereof.

Seller check applicable box:

- The Seller certifies that the Seller does not know of any wells on the described real property.
- A well disclosure certificate accompanies this document.
- I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.
2. **TITLE.** Seller warrants that title to the Property is, on the date of this Contract, subject only to the following exceptions:
- (a) Covenants, conditions, restrictions (without effective forfeiture provisions) and declarations of record, if any;
- (b) Reservations of minerals or mineral rights by the State of Minnesota, if any;
- (c) Utility and drainage easement which do not interfere with present improvements;
- (d) Applicable laws, ordinances and regulations
- (e) The lien of real estate taxes and installments of special assessments which are payable by Purchasers pursuant to paragraph 6 of this Contract; and
- (f) The following liens or encumbrances:

3. **DELIVERY OF DEED AND EVIDENCE OF TITLE.** Upon Purchasers' full performance of this Contract, Seller shall:

- (a) Execute, acknowledge and deliver to Purchasers a Limited Warranty Deed Deed, in recordable form, conveying marketable title to the Property to Purchasers, subject only to the following exceptions:
- (i) Those exceptions referred to in paragraph 2(a), (b), (c), (d) and (e) of this Contract;
- (ii) Liens, encumbrances, adverse claims or other matters which Purchasers has created, suffered or permitted to accrue after the date of this Contract; and
- (iii) The following liens or encumbrances:
- (b) Deliver to Purchasers the abstract of title to the Property without further extension, to the extent required by the purchase agreement (if any) between Seller and Purchasers.

85-M CONTRACT FOR DEED

Individual(s) to Individual

4. **PURCHASE PRICE.** Purchasers shall pay to Seller, at 570 Asbury St., Ste 202, St Paul, Minnesota 55104, the sum of One Hundred Twenty Six Thousand Three Hundred Fifty Six Dollars and 55/100 (126356.55), as and for the purchase price (the "Purchase Price") for the Property, payable as follows:
- Monthly payments in the amount of \$971.57 (P&I) with an interest rate of 8 1/2%, beginning April 1st, 2004.
 - Monthly escrow for property taxes in the amount of \$103.00. Monthly escrow for homeowners insurance in the amount of \$71.83 for a total monthly payment of \$1146.40.
 - Late payment of 10% after 5 days late.
 - Balloon payment due two years from contract. March 1, 2006.
5. **PREPAYMENT.** Unless otherwise provided in this Contract, Purchasers shall have the right to fully or partially prepay this Contract at any time without penalty. Any partial prepayment shall be applied first to payment of amounts then due under this Contract, including unpaid accrued interest, and the balance shall be applied to the principal installments to be paid in the inverse order of their maturity. Partial prepayment shall not postpone the due date of the installments to be paid pursuant to this Contract or change the amount of such installments.
6. **REAL ESTATE TAXES AND ASSESSMENTS.** Real estate taxes and installments of special assessments which are due and payable in the year in which this Contract is dated shall be paid as follows:
- same year tax and assessments split
- Purchasers shall pay, before penalty accrues, all real estate taxes and installments of special assessments assessed against the Property which are due and payable in all subsequent years. Seller warrants that the real estate taxes and installments of special assessments which were due and payable in the years preceding the year in which this Contract is dated are paid in full. If the Property is subject to a recorded declaration providing for assessments to be levied against the Property by an owner's association, Purchasers shall promptly pay, when due, all assessments imposed by the owner's association or other governing body as required by the provisions of the declaration or other related documents.
7. **PROPERTY INSURANCE.**
- INSURED RISKS AND AMOUNTS.** Purchasers shall keep all buildings, improvements and fixtures now or later located on or a part of the Property insured against loss by fire, lightning and such other perils as are included in a standard "all-risk" endorsement, and against loss or damage by all other risks and hazards covered by a standard extended coverage insurance policy, including, without limitation, vandalism, malicious mischief, burglary, theft, and if applicable, steam boiler explosion. If any of the buildings, improvements or fixtures are located in a federally designated flood prone area, and if flood insurance is available for that area, Purchasers shall procure and maintain flood insurance in amounts reasonably satisfactory to Seller.
 - OTHER TERMS.** The insurance policy shall contain a loss payable clause in favor of Seller which provides that Seller's right to recover under the insurance shall not be impaired by any acts or omissions of Purchasers or Seller, and that Seller shall otherwise be afforded all rights and privileges customarily provided a mortgagee under the so-called standard mortgage clause.
 - NOTICE OF DAMAGE.** In the event of damage to the Property by fire or other casualty, Purchasers shall promptly give notice of such damage to Seller and the insurance company.
8. **DAMAGE TO THE PROPERTY.**
- APPLICATION OF INSURANCE PROCEEDS.** If the Property is damaged by fire or other casualty, the insurance proceeds paid on account of such damage shall be applied to payment of the amounts payable by Purchasers under this Contract, even if such amounts are not then due to be paid, unless Purchasers make a permitted election described in the next paragraph. Such amounts shall be first applied to unpaid accrued interest and next to the installments to be paid as provided in this Contract in the inverse order of their maturity. Such payment shall not postpone the due date of the installments to be paid pursuant to this Contract or change the amount of such installments. The balance of insurance proceeds, if any, shall be the property of Purchasers.
 - PURCHASERS' ELECTION TO REBUILD.** If Purchasers' are not in default under this Contract, or after curing any such default, and if the mortgagees in any prior mortgages and sellers in any prior contracts for deed do not require otherwise, Purchasers may elect to have that portion of such insurance proceeds necessary to repair, replace or restore the damaged Property (the "Repairs") deposited in escrow with a bank or title insurance company qualified to do business in the State of Minnesota, or such other party as may be mutually agreeable to Seller and Purchasers. The election may only be made by written notice to Seller within sixty days after the damage occurs. Also, the election will only be permitted if the plans and specifications and contracts for the Repairs are approved by Seller, which approval Seller shall not unreasonably withhold or delay. If such a permitted election is made by Purchasers, Seller and

55-M CONTRACT FOR DEED**Individual(s) to Individual**

Purchasers shall jointly deposit, when paid, such insurance proceeds into such escrow. If such insurance proceeds are insufficient for the Repairs, Purchasers shall, before the commencement of the Repairs, deposit into such escrow sufficient additional money to insure the full payment for the Repairs. Even if the insurance proceeds are unavailable or are insufficient to pay the cost of the Repairs, Purchasers shall at all times be responsible to pay the full cost of the Repairs. All escrowed funds shall be disbursed by the escrowee in accordance with generally accepted sound construction disbursement procedures. The costs incurred or to be incurred on account of such escrow shall be deposited by Purchaser into such escrow before the commencement of the Repairs. Purchasers shall complete the Repairs as soon as reasonably possible and in a good and workmanlike manner, and in any event the Repairs shall be completed by Purchasers within one year after the damage occurs. If, following the completion of and payment for the Repairs, there remains any undisbursed escrow funds, such funds shall be applied to payment of the amounts payable by Purchasers under this Contract in accordance with paragraph 8 (a) above.

- (e) **OWNERS' ASSOCIATION.** If the Property is subject to a recorded declaration, so long as the owner's association maintains a master or blanket policy of insurance against fire, extended coverage perils and such other hazards and in such amount as are required by this Contract, then: (i) Purchasers' obligation in this Contract to maintain hazard insurance coverage on this Property is satisfied; and (ii) the provisions in paragraph 8(a) of this Contract regarding application of insurance proceeds shall be superseded by the provisions of the declaration or other related documents; and (iii) in the event of a distribution of insurance proceeds in lieu of restoration or repair following an insured casualty loss to the Property, any such proceeds payable to Purchasers are hereby assigned and shall be paid to Seller for application to the sum secured by this Contract, with the excess, if any, paid to Purchasers.

9. INJURY OR DAMAGE OCCURRING ON THE PROPERTY.

- (a) **LIABILITY.** Seller shall be free from liability and claims for damages by reason of injuries occurring on or after the date of this contract to any person or persons or property while on or about the Property. Purchasers shall defend and indemnify Seller from all liability, loss, costs and obligations, including reasonable attorneys' fees, on account of or arising out of any such injuries. However, Purchasers shall have no liability or obligation to Seller for such injuries which are caused by the negligence or intentional wrongful acts or omissions of Seller.
- (b) **LIABILITY INSURANCE.** Purchasers shall, at Purchaser's own expense, procure and maintain liability insurance against claims for bodily injury, death and property damage occurring on or about the Property in amounts reasonably satisfactory to Seller and naming Seller as an additional insured.

10. **INSURANCE GENERALLY.** The insurance which Purchasers is required to procure and maintain pursuant to paragraphs 7 and 9 of this Contract shall be issued by an insurance company or companies licensed to do business in the State of Minnesota and acceptable to Seller. The insurance shall be maintained by Purchasers at all times while any amount remains unpaid under this Contract. The insurance policies shall provide for not less than ten days written notice to Seller before cancellation, non-renewal, termination or change in coverage, and Purchasers shall deliver to Seller a duplicate original or certificate of such insurance policy or policies.

11. **CONDEMNATION.** If all or any part of the Property is taken in condemnation proceedings instituted under power of eminent domain or is conveyed in lieu thereof under threat of condemnation, the money paid pursuant to such condemnation or conveyance in lieu thereof shall be applied to payment of the amounts payable by Purchasers under this Contract, even if such amounts are not then due to be paid. Such amounts shall be applied in the same manner as a prepayment as provided in paragraph 5 of this Contract. Such payment shall not postpone the due date of the installments to be paid pursuant to this Contract or change the amount of such installments. The balance, if any, shall be the property of Purchasers.

12. **WASTE, REPAIR AND LIENS.** Purchasers shall not remove or demolish any buildings, improvements or fixtures now or later located on or a part of the Property, nor shall Purchasers commit or allow waste of the Property. Purchasers shall maintain the Property in good condition and repair. Purchasers shall not create or permit to accrue liens or adverse claims against the Property which constitute a lien or claim against Seller's interest in the Property. Purchasers shall pay to Seller all accounts, costs and expenses, including reasonable attorneys' fees, incurred by Seller to remove any such liens or adverse claims.

13. **COMPLIANCE WITH LAWS.** Except for matters which Seller has created, suffered or permitted to exist prior to the date of this Contract, Purchasers shall comply or cause compliance with all laws and regulations of any governmental authority which affect the Property or the manner of using or operating the same, and with all restrictive covenants, if any, affecting title to the Property or the use thereof.

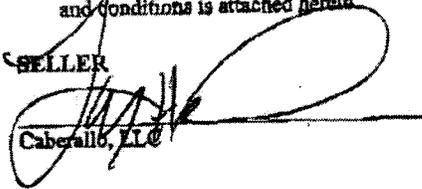
14. **RECORDING OF CONTRACT; DEED TAX.** Purchasers shall, upon Purchasers' expense, record this Contract in the office of the county recorder or register of titles in the county in which the Property is located within four (4) months after the date hereof. Purchasers shall pay any penalty imposed under Minnesota Statutes Section 507.235 for failure to timely record the Contract. Purchaser shall, upon

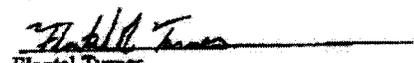
55-M CONTRACT FOR DEED

Individual(s) to Individual

Purchasers' full performance of this Contract, pay the deed tax due upon the recording of the deed to be delivered by Seller.

- 15. NOTICE OF ASSIGNMENT. If either Seller or Purchasers assigns their interest in the Property, the assigning party shall promptly furnish a copy of such assignment to the non-assigning party.
- 16. PROTECTION OF INTERESTS. If Purchasers fail to pay any sum of money required under the terms of this Contract or fails to perform any of Purchasers' obligations as set forth in this Contract, Seller may, at Seller's option, pay the same or cause the same to be performed, or both, and the amounts so paid by Seller and the cost of such performance shall be payable at once, with interest at the rate stated in paragraph 4 of this Contract, as an additional amount due Seller under this Contract. If there now exists, or if Seller hereafter creates, suffers or permits to accrue, any mortgage, contract for deed, lien or encumbrance against the Property which is not herein expressly assumed by Purchasers, and provided Purchasers are not in default under this Contract, Seller shall timely pay all amounts due thereon, and if Seller fails to do so, Purchasers may, at Purchasers' option, pay any such delinquent amounts or take any action reasonably necessary to cure defaults thereunder and deduct the amounts so paid together with interest at the rate provided in this Contract from the payments next coming due under this Contract.
- 17. DEFAULTS AND REMEDIES. The time of performance by Purchasers of the terms of this Contract is an essential part of this Contract. If Purchasers fail to timely perform any term of this Contract, Seller may, at Seller's option, elect to declare this Contract cancelled and terminated by notice to Purchasers in accordance with applicable law or elect any other remedy available at law or in equity. If Seller elects to terminate this Contract, all right, title and interest acquired under this Contract by Purchasers shall then cease and terminate, and all improvements made upon the Property and all payments made by Purchasers pursuant to this Contract shall belong to Seller as liquidated damages for breach of this contract. Neither the extension of the time for payment of any sum of money to be paid hereunder nor any waiver by Seller of Seller's rights to declare this Contract forfeited by reason of any breach shall in any manner affect Seller's right to cancel this Contract because of defaults subsequently occurring, and no extension of time shall be valid unless agreed to in writing. After service of notice of default and failure to cure such default within the period allowed by law, Purchasers shall, upon demand, surrender possession of the Property to Seller, but Purchasers shall be entitled to possession of the Property until the expiration of such period. Failure by Seller to exercise one or more remedies available under this paragraph 17 shall not constitute a waiver of the right to exercise such remedy or remedies thereafter.
- 18. BINDING EFFECT. The terms of this Contract shall run with the land and bind the parties hereto and their successors in interest.
- 19. HEADINGS. Headings of the paragraphs of this Contract are for convenience only and do not define, limit or construe the contents of such paragraphs.
- 20. ADDITIONAL TERMS: Check here if an Addendum to Contract for Deed containing additional terms and conditions is attached hereto

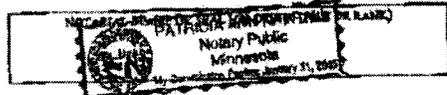
SELLER

 Caberillo, LLC

PURCHASER

 Floral Turner

 Brook Turner

STATE OF MINNESOTA)
)ss.
 COUNTY OF HENNEPIN)

This instrument was acknowledged before me this 19th day of March, 2004, by Jason Herout President of Caberillo, LLC, a Limited Liability Company




 SIGNATURE OF NOTARY PUBLIC OR OTHER OFFICIAL

STATE OF MINNESOTA)
)ss.
 COUNTY OF HENNEPIN)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

CHAPTER 13 CASE

Fontal Neville Turner
SSN: XXX-XX-5710
and

Brooke Anne Turner
SSN: XXX-XX-0512

CASE NO. 04-32764

Debtor.

**MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR RELIEF FROM STAY**

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. §362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. §362(g) the burden is on the Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

- a. As of September 1, 2004, Debtors are delinquent for the monthly payments as required in the amount of \$1,243.56; accruing late charges and attorneys' fees and costs of \$97.16.
- b. Debtor has failed to make any offer of adequate protection.
- c. Debtors' failure to meet Debtors' obligations to make payments as they become due after filing of the bankruptcy petition, constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. §362(d)(1). A continued failure by Debtors to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to

UNITED STATES BANKRUPTCY COURT
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CASE NO. 04-32764

Debtors.

UNSWORN CERTIFICATE OF SERVICE

I, Richard M. Carlson, declare under penalty of perjury that on October 5, 2004, I mailed copies of the annexed Notice of Hearing and Motion for Relief from Stay, Scanned Verification, Scanned Exhibit, Memorandum in Support of Motion for Relief from Stay, Unsworn Certificate of Service; and Proposed Order to each person/entity referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office box at Edina, Minnesota addressed to each of them as follows:

United States Trustee 1015 U S Courthouse 300 South 4 th Street Minneapolis, MN 55415 (Debtor(s) Attorney)	(Debtor(s))	(Trustee)
	Fontal Neville Turner 747 Edgerton Street St. Paul, MN 55101	Jasmine Z. Keller 310 Plymouth Building 12 South Sixth Street Minneapolis, MN 55402
Curtis K. Walker 4356 Nicollet Avenue So. Minneapolis, MN 55409	Brooke Anne Turner 747 Edgerton Street St. Paul, MN 55101	

Dated: October 5, 2004

MORRIS, CARLSON & HOELSCHER, P.A.

By: /s/ Richard M. Carlson
Richard M. Carlson (Atty. Reg. No. 187148)
Kelly Vince Griffitts (Atty Reg. No. 232695)
7380 France Avenue South, Suite 200
Minneapolis, MN 55435
(952) 832-2000
Attorneys for Secured Creditor

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Fontal Neville Turner
SSN: XXX-XX-5710
and
Brooke Anne Turner
SSN: XXX-XX-0512

CHAPTER 13

CASE NO. 04-32764

Debtors.

ORDER TERMINATING STAY

This matter came before the Court on November 1, 2004, upon the motion by Caberallo, LLC for an order terminating the stay. Kelly Vincent Griffitts of the law firm of Morris Carlson & Hoelscher, P.A. appeared on behalf of Vendor/Secured Creditor. Other appearances were duly noted on the record. Based upon the motion, argument of counsel and all files, records and proceedings herein.

IT IS HEREBY ORDERED,

1. The stay under 11 U.S.C. § 362(a) of the Bankruptcy Code is terminated as to that certain Contract for Deed dated March 19, 2004, executed by Debtors as Vendee. The Contract for Deed covers real property situate in the State of Minnesota, County of Ramsey, legally described as:

Lot 17, Block 16, Stinson's Addition to the City of St. Paul.

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

Dated this _____ day of _____, 2004.

The Honorable Gregory F. Kishel
U.S. Bankruptcy Court Judge