

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Marc Harold Ferris
SSN XXX-XX-9797
Tracie Kay Ferris
SSN XXX-XX-3201

CASE NO. 04-32869 DDO

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

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

1. RBMG, Inc. (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 October 13, 2004, at 9:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Dennis D. O'Brien in Courtroom 228A of the above entitled Court located at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 8, 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 October 4, 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 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 12, 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 - 9019-1. Movant requests relief from the automatic stay with respect to property subject to a lien. 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 \$171,800.00, as evidenced by that certain mortgage deed dated February 26, 1999, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated February 26, 1999, executed by Marc H. Ferris and Tracie K. Ferris, husband and wife, recorded on April 16, 1999, as Document No. 397171, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is located in Dakota County, Minnesota and is legally described as follows to-wit:

Lot 23, Block 2, Kenridge 2nd Addition.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

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 23, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of July, 2004 through September, 2004, inclusive, in the amount of \$1,334.22 each; accruing late charges and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

11. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its

rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 23rd day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

397171

DEA

COPY DEL'D

OFFICE OF THE REGISTRAR OF TITLES
 DAKOTA COUNTY, MINNESOTA
 CERTIFIED TRUE COPY OF THE INSTRUMENT
 FILED FOR RECORD IN THIS OFFICE ON APR 16 PM 12

DOC NO. 397171
 CERTIFICATE NO. 15164
 VOLUME 288 PAGE 34
 JOEL T. BECKMAN REGISTRAR OF TITLES
 BR. 211 Deputy
 FEE 15.00 SURCHARGE 4.50
 NON-ASSUR. LEND FEE
 CASH CHECK ESCROW
 WELL CHANGE
 CHARGE TO: _____
 O/R _____
 DO NOT REMOVE 3074

[Space Above This Line For Recording Data]

AP# 316
LN# 215961

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on February 26, 1999
 The mortgagor is Marc H. Ferris and Tracie K. Ferris, Husband and Wife

("Borrower"). This Security Instrument is given to
 Provincial Bank

which is organized and existing under the laws of the state of Minnesota, and whose
 address is 20280 Iberia Ave., Lakeville, MN 55044

("Lender"). Borrower owes Lender the principal sum of
 One Hundred Seventy One Thousand Eight Hundred and no/100 Dollars (U.S. \$ 171,800.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which
 provides for monthly payments, with the full debt, if not paid earlier, due and payable on
 March 1, 2029 and for interest at the yearly rate of Six and Three / Quarters
 percent. This Security Instrument secures to Lender: (a) the repayment of
 the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the
 payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security

MINNESOTA-Single Family-FWMA/FHMO UNIFORM INSTRUMENT

Form 3024 8/90
 Amended 5/94
 Page 1 of 1 MW GWR
 VAP MORTGAGE FORMS - 800631-7281



EXHIBIT A

RECEIVED
APR 02 1999

VALIDATE *****
 0582 DAIRY NORT
 04/15/1999 13:00:58 441690
 THOMAS V NEAL, DAKOTA COUNTY TREAS.
 REGISTRATION TAX 395.14
 COUNTY CONSERVATION FEE 5.00
 RECEIPT NUMBER 276787

DC98080175-DEA AV

Instrument); and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in **Dakota** County, Minnesota:
 Lot 23, Block 2, Kenridge 2nd Addition

which has the address of 17800 Firebird Court, Lakeville
 Minnesota 55044 (Zip Code) ("Property Address");

(Street, City).

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 2601 *et seq.* ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentally, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time

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Tracie Kay Ferris
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CASE NO. 04-32869 DDO

Debtor.

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

ARGUMENT

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 Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of September 23, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of July, 2004 through September, 2004, in the amount of \$1,334.22 each; accruing late charges and attorneys fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

The property is also subject to a second mortgage in favor of Provincial Bank in excess of \$21,735.58.

Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to relief from the

automatic stay. See In re Taylor, 151 B.R. 646 (E.D.N.Y., 1993) and In re Davis, 64 B.R. 358 (Bkrcty. S.D.N.Y., 1986).

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected.

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 23rd day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske _____

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

UNITED STATES BANKRUPTCY COURT
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CASE NO. 04-32869 DDO

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Tracie Kay Ferris
SSN XXX-XX-3201

AFFIDAVIT OF
RICHARD B. HAWKS, II

Debtor.

Richard B. Hawks, II

being first duly sworn on oath, deposes and states:

1. That he/she is the Bankruptcy Specialist of First American.
2. RBMG, Inc. on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated February 26, 1999, executed by Marc H. Ferris and Tracie K. Ferris, husband and wife, recorded April 16, 1999, as Document No. 397171. The property is located in Dakota County, Minnesota and is legally described as follows, to-wit:

Lot 23, Block 2, Kenridge 2nd Addition.

3. That he/she has reviewed the account records relating to the Ferris' mortgage loan, account no. 0000215961.
4. That as of September 10, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$160,426.67
Interest through October 1, 2004	8,969.55
Attorney's Fees:	700.00
Late Charges:	501.10
Escrow Advance:	1,496.56
Other Fees:	37.30
Recoverable Balance:	1,531.84

TOTAL: \$173,663.02

5. That the mortgage loan is delinquent for post-petition monthly mortgage payments for the months of July, 2004 through September, 2004 in the amount of \$1,334.22 each.
6. This affidavit is given in support of the motion of RBMG, Inc. for relief from the automatic stay.

FIRST AMERICAN

By

[Signature]
Its Bankruptcy Specialist

Subscribed and sworn to before me
this 14th day of September, 2004.

Angela M. Wansley
Notary Public
9733_1



**UNITED STATES BANKRUPTCY COURT
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Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on September 23, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Richard B. Hawks, II, and proposed Order to each person 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 at Woodbury, Minnesota addressed to each of them as follows:

Marc H. Ferris
Tracie K. Ferris
17800 Firebird Ct.
Farmington, MN 55024

DaimlerChrysler Services North America, L.L.C.
c/o Riezman Berger, P.C.
7700 Bonhomme, 7th Floor
St. Louis, MO 63105

Elizabeth A. Cloutier
Cloutier & Cloutier LP
608 2nd Ave S Ste 250
Minneapolis, MN 55402

Jasmine Z. Keller
12 S 6th St Ste 310
Minneapolis, MN 55402

Provincial Bank
20280 Iberia Avenue
P.O. Box 459
Lakeville, MN 55044

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.

Dated this 23rd day of September, 2004.

/e/ Diana Waletzko
Diana Waletzko

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ORDER

The above entitled matter came on for hearing upon motion of RBMG, Inc. (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on October 13, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota. Appearances were as noted in the record. The Chapter 13 Trustee filed her Report of Standing Trustee in response to this motion. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated February 26, 1999, executed by Marc H. Ferris and Tracie K. Ferris, husband and wife, recorded on April 16, 1999, as Document No. 397171 covering real estate located in Dakota County, Minnesota, legally described as follows, to-wit:

Lot 23, Block 2, Kenridge 2nd Addition

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3),

this Order is effective immediately.

Dated: _____

Judge of Bankruptcy Court