

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Holly Lee Jensen,

Debtor.

COURT FILE NO. 04-33424/GFK
Chapter 13

**SECOND AMENDED NOTICE OF
HEARING AND MOTION FOR RELIEF
FROM THE AUTOMATIC STAY**

TO: DEBTOR HOLLY LEE JENSEN and her attorney Curtis K. Walker, Esq., 4356 Nicollet Avenue South, Minneapolis, MN 55409, Chapter 13 Trustee, U.S. Trustee, and other parties in interest.

1. Chris and Linda Troup ("Movants"), secured creditors of the Debtor, by their undersigned attorney, move the Court for the relief requested below and give notice of hearing.

2. The Court will hold a hearing on this motion on **September 13, 2004**, at **10:30 A.M.** before the Honorable Gregory F. Kishel, in Courtroom No. 228 B, United States Courthouse, 316 North Robert Street, Saint Paul, Minnesota 55101.

3. Any response to this motion must be filed and served not later than September 10, 2004, which is three days before the time set for the hearing or filed and served by mail not later than September 6, 2004, which is seven days before the date 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. 5004 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on June 9, 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 to 9019-1.

6. Movants request relief with respect to modifying the automatic stay to permit Movants to pursue state law remedies against its collateral, namely the Property as defined below.

7. Movants are the owners and holders of a Contract for Deed for certain real property located at 2618 Anna Court, New Market, Scott County, MN 55054, with the following legal description: Lot 12, Block 4, The Farm 2nd Addition ("Property"). Debtor is the purchaser on the Contract for Deed. A true and correct copy of the Contract for Deed is attached hereto as Exhibit A.

8. The terms of the Contract for Deed require the Debtor to make interest-only payments in the amount of \$2,494.00 on the twenty-first day of each month for three years. Upon the successful completion of this payment schedule, the Debtor must make a balloon payment equal to the outstanding principal amount together with accrued interest in order to obtain title to the Property

9. On August 13, 2004, the Debtor filed her Amended proposed Chapter 13 Plan. The Plan is scheduled for a hearing on confirmation on September 23, 2004.

10. The proposed Chapter 13 Plan requires the Debtor to maintain post-petition payments in the amount of \$2,494.00 to Movants as set forth in the Contract for Deed.

11. The Debtor has failed to pay the monthly Contract for Deed payment due on July 21, 2004 and on August 21, 2004.

12. The Debtor's pre-petition arrearage on her Contract for Deed is \$7,482.00. The principal amount due under the Contract for Deed is \$348,000.00. The total of principal, pre-petition and post-petition arrearages is \$360, 470.00.

13. The Debtor does not have any equity in the Property because the balance due on the Contract for Deed exceeds the fair market value of the Property, estimated by the Debtor to be \$348,000.00.

14. By reason of the foregoing, "cause" exists to modify the automatic stay with respect to the Movants so that they can pursue their state law remedies with respect to the Property.

15. If the Court requires testimony at the hearing, Chris Troup will serve as a witness. Upon information and belief, Chris Troup will testify to the value of the Property and the amount of the Debtor's delinquency.

WHEREFORE, the Movants, by their undersigned attorney, move the Court for an Order modifying the automatic stay provided by 11 U.S.C. §362(a) to permit the Movants to pursue their state law remedies with respect to the Property and for such other and further relief as may be just and equitable.

Dated: August 27, 2004

By /e/ Cass S. Weil
Cass S. Weil (#115228)

Julia M. Dayton (#319181)
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis MN 55402-4129
Telephone: (612) 347-0300
ATTORNEYS FOR CHRIS AND LINDA
TROUP

VERIFICATION

I, Chris Troup, have read the above and foregoing Notice of Hearing and Motion for Relief from the Automatic Stay and know the contents thereof to be true and correct, except for those matters stated on information and belief, and as to those matters, I believe them to be true. I so declare under penalty of perjury.

BY 
Chris Troup

CONTRACT FOR DEED
Individual Seller

Form No. 54-M

Minnesota Uniform Conveyancing Blanks (2000)

No delinquent taxes and transfer entered; Certificate of Real Estate Value () filed () not required
 Certificate of Real Estate Value No. _____

 (Date)

 County Auditor
 by: _____
 Deputy

(reserved for recording data)

Date: October 24, 2003

THIS CONTRACT FOR DEED (the "Contract") is made on the above date by

CHRISTOPHER D. TROUP AND LINDA S. TROUP

 husband and wife

Seller (whether one or more), and
HOLLY L. JENSEN

Purchaser (whether one or more)
 (check box if joint tenancy).

Seller and Purchaser agree to the following terms:

1. PROPERTY DESCRIPTION. Seller hereby sells, and Purchaser hereby buys, real property in SCOTT
 County, Minnesota, described as follows:
 Lot 12, Block 4, The Farm 2nd Addition

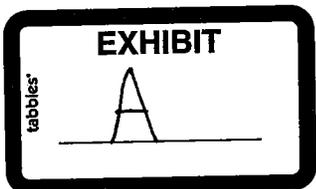
together with all hereditaments and appurtenances belonging thereto (the "Property"). Unless otherwise specified, Seller hereby delivers possession of the Property to Purchaser on the date hereof.

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) Reservation of minerals or mineral rights by the State of Minnesota, if any;
 (c) Utility and drainage easements 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 Purchaser pursuant to paragraph 6 of this Contract; and
 (f) The following liens or encumbrances:
 September 30, 2003 mortgage given by Seller to The Mortgage Store Financial, Inc. in the amount of \$330,600.00.

3. DELIVERY OF DEED AND EVIDENCE OF TITLE. Upon Purchaser's full performance of this Contract, Seller shall:
 (a) Execute, acknowledge and deliver to Purchaser a General Warranty Deed, in recordable form, conveying marketable title to the Property to Purchaser, 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 Purchaser has created, suffered or permitted to accrue after the date of this Contract; and
 (iii) The following liens or encumbrances:

(b) Deliver to Purchaser the abstract of title to the Property, without further extension, to the extent required by the purchase agreement (if any) between Seller and Purchaser.



4. PURCHASE PRICE. Purchaser shall pay to Seller, at 3511 Thorwood Court, Eagan, MN 55123

the sum of Three Hundred Forty Eight Thousand and No/100 Dollars (\$ 348,000.00),

as and for the purchase price (the "Purchase Price") for the Property, payable as follows:

Interest only from the date of closing through and including the third anniversary of closing, at which time the entire principal balance of \$348,000.00, together with accrued interest, shall be due and payable in full. Interest shall accrue at the rate of 8.6% per annum, and all accrued interest shall be payable in full on the first of each succeeding month subsequent to the date of this contract. Payments of interest hereunder for a full month hereunder shall be in the amount of \$2,494.00. The per diem interest accruing on the balance hereof, for purposes of calculating a payment required hereunder for less than a full month, is \$82.00.

THE FINAL PAYMENT HEREUNDER IS A BALLOON PAYMENT.

5. PREPAYMENT. Unless otherwise provided in this Contract, Purchaser 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:
Paid by Seller

Purchaser 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 any owners' association, Purchaser shall promptly pay, when due, all assessments imposed by the owners' association or other governing body as required by the provisions of the declaration or other related documents.

7. PROPERTY INSURANCE.

- (a) INSURED RISKS AND AMOUNTS. Purchaser 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. Such insurance shall be in an amount no less than the full replacement cost of the buildings, improvements and fixtures, without deduction for physical depreciation. 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, Purchaser shall procure and maintain flood insurance in amounts reasonably satisfactory to Seller.
- (b) 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 Purchaser or Seller, and that Seller shall otherwise be afforded all rights and privileges customarily provided a mortgagee under the so-called standard mortgage clause.
- (c) NOTICE OF DAMAGE. In the event of damage to the Property by fire or other casualty, Purchaser shall promptly give notice of such damage to Seller and the insurance company.

8. DAMAGE TO THE PROPERTY.

- (a) 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 Purchaser under this Contract, even if such amounts are not then due to be paid, unless Purchaser makes 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 Purchaser.
- (b) PURCHASER'S ELECTION TO REBUILD. If Purchaser is 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, Purchaser 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 Purchaser. 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 Purchaser, Seller and Purchaser shall jointly deposit, when paid, such insurance proceeds into such escrow. If such insurance proceeds are insufficient for the Repairs, Purchaser 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, Purchaser 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. Purchaser 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 Purchaser 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 Purchaser under this Contract in accordance with paragraph 8(a) above.

- (c) **OWNERS' ASSOCIATION.** If the Property is subject to a recorded declaration, so long as the owners' 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) Purchaser's obligation in the Contract to maintain hazard insurance coverage on the Property is satisfied; (ii) the provisions of 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 Purchaser 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 Purchaser.

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. Purchaser shall defend and indemnify Seller from all liability, loss, cost and obligations, including reasonable attorneys' fees, on account of or arising out of any such injuries. However, Purchaser 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.** Purchaser 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 Purchaser 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 Purchaser 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 Purchaser 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 Purchaser 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 payments 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 Purchaser.
12. **WASTE, REPAIR AND LIENS.** Purchaser shall not remove or demolish any buildings, improvements or fixtures now or later located on or a part of the Property, nor shall Purchaser commit or allow waste of the Property. Purchaser shall maintain the Property in good condition and repair. Purchaser 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. Purchaser shall pay to Seller all amounts, 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, Purchaser 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.** Purchaser shall, at Purchaser's expense, record this Contract in the office of the county recorder or registrar of titles in the county in which the Property is located within four (4) months after the date hereof. Purchaser shall pay any penalty imposed under Minnesota Statutes Section 5 07.235 for failure to timely record the Contract. Seller shall, upon Purchaser's 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 Purchaser 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 Purchaser fails to pay any sum of money required under the terms of this Contract or fails to perform any of the Purchaser's 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 Purchaser, and provided Purchaser is not in default under this Contract, Seller shall timely pay all amounts due thereon, and if Seller fails to do so, Purchaser may, at Purchaser's option, pay any such delinquent amounts or take any actions 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 Purchaser of the terms of this Contract is an essential part of this Contract. If Purchaser fails 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 Purchaser 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 Purchaser shall then cease and terminate, and all improvements made upon the Property and all payments made by Purchaser pursuant to this Contract (including escrow payments, if any) 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, Purchaser shall, upon demand, surrender possession of the Property to Seller, but Purchaser 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 the 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

[Handwritten Signature]

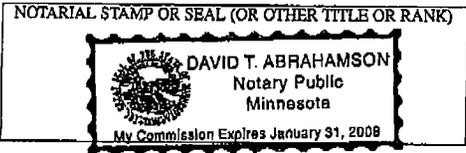
Linda S. Troup

PURCHASER

Holly Jensen

STATE OF MINNESOTA }
 COUNTY OF Hennepin } ss.

This instrument was acknowledged before me on October 24, 2003
 by Christopher D. Troup and Linda S. Troup, husband and wife (b)(2)

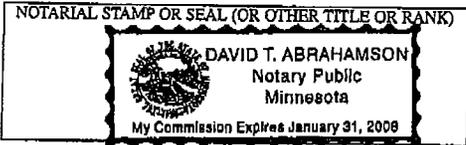


[Handwritten Signature]

 SIGNATURE OF NOTARY PUBLIC OR OTHER OFFICIAL

STATE OF MINNESOTA }
 COUNTY OF Hennepin } ss.

This instrument was acknowledged before me on October 24, 2003
 by Holly L. Jensen (b)(2)



[Handwritten Signature]

 SIGNATURE OF NOTARY PUBLIC OR OTHER OFFICIAL

THIS INSTRUMENT WAS DRAFTED BY: (NAME AND ADDRESS)
 S. Todd Rapp P.A.
 15025 Glazier Avenue
 Suite 401
 Apple Valley, MN 55124
 (952) 432-3240

Check here if all or part of the land is registered (Torrens).
 Tax Statements for the real property described in this instrument should be sent to: (include name and address)

FAILURE TO RECORD THIS CONTRACT FOR DEED MAY GIVE OTHER PARTIES PRIORITY OVER PURCHASER'S INTEREST IN THE PROPERTY.

THIS ADDENDUM TO CONTRACT FOR DEED is attached to and made a part of a certain
 Contract for Deed dated October, 2003,
 between Christopher D. Troup and Linda S. Troup, husband and wife, Seller,
 and Holly L. Jensen, Purchaser.

The terms and conditions contained in the Addendum shall supersede any conflicting provisions contained in this Contract. Only those provisions checked in the "Yes" column below shall be included in and be a part of this Addendum.

- | Yes | No | |
|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | A. LATE PAYMENT FEE. If any payment is not received by Seller within fifteen (15) days of the date when due, Purchaser shall additionally pay to Seller, to the extent allowed by law, a late charge of four percent (4%) of the amount of the delinquent payment. |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | B. TRANSFER RESTRICTIONS. Purchaser may not sell, assign or otherwise transfer Purchaser's interest in this Contract, or the Property, or any part thereof or if Purchaser is an entity, the controlling interest in Purchaser may not be transferred without the written consent of Seller, <input checked="" type="checkbox"/> which consent shall be granted or withheld in the sole discretion of Seller <input type="checkbox"/> which consent shall not be unreasonably withheld or delayed by Seller (check one). |
| <input type="checkbox"/> | <input type="checkbox"/> | C. ESCROWS. In addition to the monthly payments of principal and interest, Purchaser shall deposit with Seller, with each payment, an amount representing one-twelfth (1/12) of the annual real estate taxes, installments of special assessments and insurance premiums with respect to the Property (or such other amount as Seller is required to deposit under any underlying encumbrance on the Property). The amount of such taxes, special assessments and insurance premiums, when unknown, shall be estimated by Seller. Such deposit shall be used by Seller to pay real estate taxes, installments of special assessments and insurance premiums with respect to the Property when due. If Seller fails to do so, Purchaser may, at Purchaser's option, pay any such delinquent amounts and deduct the amounts so paid from payments next coming due under this Contract. If the balance deposited with Seller is insufficient to pay such real estate taxes, special assessments and insurance premiums when due, Purchaser shall pay the deficiency to Seller upon written demand. |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | D. PROPERTY IMPROVEMENTS. Except for work reasonably necessary to permit Purchaser to comply with Purchaser's obligations under this Contract, Purchaser shall not hire or perform any repairs or improvements to or replacements of the Property having an aggregate cost in excess of \$ <u>1,000.00</u> , without securing the prior written consent of Seller. Purchaser will not cause or permit any mechanics' liens to be recorded against the Property. Purchaser agrees to defend, indemnify and hold Seller harmless from any loss, damage or expense incurred by Seller with respect to any party asserting a mechanics' lien claim, it being understood and agreed that this undertaking shall survive cancellation of this Contract or the delivery of a deed pursuant to the terms hereof. |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | E. HAZARDOUS SUBSTANCES. Purchaser shall not bring, store, generate or treat hazardous wastes or substances or petroleum products upon the Property, except for small quantities which are stored and used in compliance with applicable law. Purchaser hereby agrees to indemnify, defend and hold Seller harmless from any and all claims, demands, actions, causes of action, liabilities or rights which may be asserted against Seller with respect to such substances, or products, it being understood and agreed that this obligation will survive the cancellation of this Contract or the delivery of a deed pursuant to the terms hereof. |
| <input type="checkbox"/> | <input type="checkbox"/> | F. ALTERNATIVE ACCELERATION REMEDY. If Purchaser fails to timely perform any term of this Contract, Seller may elect, on thirty (30) days' written notice given to Purchaser, to declare the entire unpaid Purchase Price, together with accrued interest thereon, immediately due and payable in full and commence an action against Purchaser to collect all amounts due hereunder. Purchaser shall have the right to reinstate this Contract at any time before entry of final judgment against Purchaser for amounts due hereunder if Purchaser: (i) pays Seller all sums due hereunder as of the date of reinstatement; (ii) cures any other defaults existing under this Contract as of the date of reinstatement; and (iii) pays all expenses incurred by Seller in enforcing this Contract, including, but not limited to, reasonable attorneys' fees and costs. Seller shall deliver the deed for the Property in the manner required by Paragraph 3 of this Contract when all amounts due hereunder have been paid. |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | G. NONRECOURSE OBLIGATION. Notwithstanding any other provision contained in this Contract to the contrary, if Purchaser defaults in Purchaser's performance of this Contract, Seller's sole remedy shall be to cancel this Contract in accordance with Minnesota Statutes Section 559.21, as the same may from time to time be amended. Seller specifically waives any right it may have to commence an action for the specific performance of this Contract for Deed or any right it may have to seek an award of damages against Purchaser. |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | H. ADDITIONAL PROVISIONS.
Purchaser agrees during the term of this Contract for Deed to (i) provide to Seller copies of paid real estate tax statements for the subject property, together with receipts for payment thereof, on or before June 1 and November 1; and (ii) provide to Seller certificates confirming that at all times the insurance required pursuant to Section 7 hereof has been procured by Purchaser and, if requested by Seller, Purchaser agrees to add Seller's mortgagee referenced in Section 2(f) above as an additional named insured/loss payee under Purchaser's insurance coverage(s). |

THIS FORM CANNOT BE RECORDED INDEPENDENTLY. IT MUST BE ATTACHED TO A CONTRACT FOR DEED.

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Holly Lee Jensen,

Debtor.

COURT FILE NO. 04-33424/GFK
Chapter 13

**AMENDED MEMORANDUM IN
SUPPORT OF CHRIS AND LINDA
TROUP'S MOTION FOR RELIEF
FROM THE AUTOMATIC STAY**

INTRODUCTION

Chris and Linda Troup ("Movants") submit this Memorandum in support of their Notice of Motion and Motion for Relief from the Automatic Stay ("Motion") in the above-entitled matter. "Cause" exists to grant relief from the automatic stay because the Debtor has not made the payment required by her proposed Chapter 13 Plan to Movants.

FACTUAL BACKGROUND

Movants are the owners and holders of a Contract for Deed, attached hereto as Exhibit A, concerning real property ("Property") located at 2618 Anna Court, New Market, Scott County, MN 55054, with the following legal description: Lot 12, Block 4, The Farm 2nd Addition. The terms of the Contract for Deed require the Debtor to make interest-only payments in the amount of \$2,494.00 on the first day of each month for three years. (Exhibit A) Upon the successful completion of this payment schedule, the Debtor must make a balloon payment equal to the outstanding principal amount, together with any accrued interest, in order to obtain legal title to the Property. (Id.) On the date this case was filed, the Debtor was three payments delinquent

under the terms of the Contract for Deed with Movants. (Motion ¶ 12). The Debtor has not made the payments due July 21, 2004, or August 21, 2004, under the Contract for Deed. (Motion ¶ 11). The Debtor's proposed Chapter 13 Plan requires the Debtor to maintain post-petition payments in the amount of \$2,494 to Movants as set forth in the Contract for Deed. Therefore, the Debtor is presently delinquent under the terms of the Contract for Deed and under the terms of her proposed Chapter 13 Plan. Movants have filed the immediate Motion in order to obtain relief from the automatic stay so that they can proceed with the cancellation of the Contract for Deed.

ARGUMENT

Section 362(d) of the Bankruptcy Code provides in pertinent part, that:

(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 termination, 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...

Movants request relief from the automatic stay under 11 U.S.C. §361(d)(1).

The Debtor has failed to make the requisite payments pursuant to the terms of the Contract for Deed. Such circumstances establish cause, within the meaning of §362(d)(1), for relief from the automatic stay. *See First Federal Savings and Loan Association of Minneapolis v. Whitebread*, 18 B.R. 192 (Bankr. D. Minn. 1982)(relief from the stay was warranted where the debtor failed to maintain payments post-petition and failed to pay down arrearages owed on the mortgage pre-petition); *see also In re Geiger*, 260 B.R. 83 (Bankr. E.D. Pa. 2001)(secured creditor was entitled to relief from stay to exercise rights in collateral where creditor's foreclosure judgment exceeded value of collateral and where debtor had not made any payments to creditor upon debt in over two years), *In re Shahid*, 27 B.R. 673 (Bankr. S.D. Ohio

1982)(relief from stay is appropriate where the debtor has allowed a sizable arrearage to accumulate on the mortgage payments to be made post-petition); *In re Kornhauser*, 184 B.R. 425 (Bankr. S.D.N.Y. 1995)(relief from stay is warranted where the debtor filed petition on eve of foreclosure and has made no payments since filing the petition).

Movants have a right under state law to cancel the Contract for Deed and take possession of the Property, but they must first secure relief from the automatic stay in this proceeding. “Cause” sufficient to justify relief from the automatic stay has been demonstrated in this matter because the Debtor has failed to comply with the terms of her proposed Chapter 13 Plan. Under her proposed Chapter 13 Plan, the Debtor is required to “maintain the regular payments which come due after the date the petition was filed.” Chapter 13 Plan, ¶ 5. Since the filing of the petition, the Movants have not received the payment due in July or August under the Contract for Deed. Furthermore, pursuant to 11 U.S.C. §362(g), once the creditor has met its burden of production of facts which establish grounds for relief from the automatic stay, the burden is on the Debtor to prove that there is an absence of cause for relief from the automatic stay. *See In re Allstar Bldg. Products, Inc.*, 834 F.2d 898 (9th Cir. 1987). In this case, unless the Debtor pays the delinquent payment, she cannot show an absence of cause.

Accordingly, the Movants are entitled to an Order modifying the automatic stay of §362(a) to permit the Movants to proceed with their state court remedies with respect to the collateral.

CONCLUSION

Based on the foregoing, the Movants respectfully request that the automatic stay be modified in accordance with this Motion.

Dated: August 27, 2004

By /e/ Cass. S. Weil

Cass S. Weil (#115228)

Julia M. Dayton (#319181)

4800 Wells Fargo Center

90 South Seventh Street

Minneapolis, MN 55402-4129

Telephone: (612) 347-0300

**ATTORNEYS FOR CHRIS AND LINDA
TROUP**

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Holly Lee Jensen,

Debtor.

COURT FILE NO. 04-33424/GFK
Chapter 13

**ORDER GRANTING MOTION FOR
RELIEF FROM STAY**

The above-entitled matter came on for hearing upon Motion of Chris Troup and Linda Troup, pursuant to 11 U.S.C. §362 before the undersigned Bankruptcy Judge. Appearances were as noted in the record. Based upon all of the files, records, and proceedings herein, the evidence adduced at the hearing and statements of counsel, and the Court being fully advised in the premises:

IT IS HEREBY ORDERED:

That Chris Troup and Linda Troup are granted a modification of the automatic stay imposed by 11 U.S.C. §362 in order to pursue its state law remedies with respect to real property located at 2618 Anna Court, New Market, Scott County, MN 55054, with the following legal description: Lot 12, Block 4, The Farm 2nd Addition, Scott County, Minnesota.

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

Dated: September __, 2004

By _____
Gregory F. Kishel
Chief United States Bankruptcy Judge,
District of Minnesota

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Holly Lee Jensen,
Debtor.

COURT FILE NO. 04-33424-GFK
Chapter 13

UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Lois M. Huntley, of the law firm of Moss & Barnett, City of Minneapolis, County of Hennepin, State of Minnesota, declare under the penalty of perjury that on August 27, 2004 I mailed copies of the attached:

1. Second Amended Notice of Hearing and Motion for Relief from the Automatic Stay;
2. Amended Memorandum;
3. Proposed Order; and
4. Unsworn Declaration of Service

by first class mail postage prepaid to each entity named below at the address stated below for each entity:

United States Trustee
U.S. Trustee Office
300 South Fourth Street, Room 1015
Minneapolis, MN 55415
(U.S. Trustee)

Curtis K. Walker
4356 Nicollet Avenue South
Minneapolis, MN 55409
(Attorney for Debtor)

Jasmine Z. Keller
12 South Sixth Street, Suite 310
Minneapolis, MN 55402
(Trustee)

Holly Lee Jensen
2618 Anna Court
New Market, MN 55054
(Debtor)

Bohlman Properties, LLC
1938 Ireland Court
Lakeville, MN 55044
(Creditor/ Lien Claimant)

Chris and Linda Troup
c/o Parish Marketing and Development
3799 Briarwood Lane
Eagan, MN 55123
(Creditor/Lien Claimant)

Executed on: August 27, 2004.

Signed: /e/ Lois M. Huntley
Lois M. Huntley
Moss & Barnett
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4129