

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

Bky No. 04-34329-GFK

In re:

John Delmar Yearous,
Tasha Lynn Yearous,
and Party Lite Gifts & Assessories,

Debtors.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: ALL PARTIES IN INTEREST.

1. First National Bank of Brookings (the "Bank"), a secured creditor of the debtors herein, 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 at 10:30 a.m., October 4, 2004, before the Honorable Gregory F. Kishel in Courtroom No. 228B, 200 U.S. Courthouse, 316 N. Robert Street, St. Paul, Minnesota, or as soon thereafter as counsel can be heard.

3. Pursuant to Local Rules 9013-2 and 9006-1 any objection or response to this motion must be filed and delivered not later than September 29, 1994, at 10:30 a.m., which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than September 23, 2004, which is seven business days before the time set for hearing (excluding Saturdays, Sundays and holidays). **PURSUANT TO LOCAL RULE 9013-2(f), UNLESS A WRITTEN RESPONSE IS TIMELY SERVED AND FILED, THE BANKRUPTCY COURT MAY ENTER AN ORDER GRANTING THE REQUESTED RELIEF WITHOUT A HEARING.**

4. This motion is filed pursuant to Bankruptcy Rule 4001 and Local Rules 9013-1 through 9013-3, and the Bank requests relief from the automatic stay of 11 U.S.C. § 362(a) with respect to certain personal property of the debtor subject to the Bank's valid security interest and requests a waiver of the 10-day stay of order pursuant to Rule 4001(a)(3).

5. The petition commencing this Chapter 7 case was filed on July 26, 2004, and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Local Rule 1070-1, 11 U.S.C. § 362(d) and applicable rules. This is a core proceeding.

6. The Bank holds a valid, perfected security interest in a 2003 Pontiac Montana, Vehicle Identification Number 1GMDX03E03D178438 (the "Vehicle"). The Vehicle is in the possession of the Bank, having been voluntarily delivered by the Debtors.

7. Copies of the Bank's Retail Installment Contract and Security Agreement (the "Contract") and Lien Holder card, respectively evidencing creation and perfection of the Bank's security interest, are attached hereto as Exhibits A and B and incorporated herein by reference.

8. Debtors are delinquent with respect to payments due under the terms of the Contract for the months of May, June, July, August and September, 2004. The amount due the Bank on the Contract as of September 3, 2004, is a principal balance of \$23,562.05, accrued interest of \$667.38, and late charges of \$67.04 for a total amount due of \$24,296.47. On information and belief, the fair market value of the Vehicle is \$18,950.00, but Debtors have valued the Vehicle at approximately \$16,000.00.

9. The Bank's security is depreciating. The Bank does not have, and has not been offered, adequate protection of its interest in the Vehicle. The Debtors have no equity in the Vehicle and, in view of the fact that this is a Chapter 7 liquidation proceeding, the Vehicle is not necessary to an effective reorganization.

10. Debtors' failure to make payments to the Bank or otherwise provide the Bank with adequate protection of its interest in the Vehicle, constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1), entitling the Bank to relief from the stay.

11. If testimony is necessary as to any facts relevant to this motion, the Bank reserves the right to call the following individuals to testify: (1) the Debtors; (2) Kelly Gorder, Collection Lead for First National Bank of Brookings; and (3) any rebuttal witness Bank deems necessary.

WHEREFORE, the Bank respectfully moves the Court for an order modifying the automatic stay of section 362(a) of the Bankruptcy Code and requests a waiver of the 10-day stay of order pursuant to Rule 4001(a)(3) authorizing the Bank to foreclose its security interest in the Vehicle and for such other relief as may be just and equitable.

Dated this 16th day of September, 2004

/e/ Jeff C. Braeglemann
Jeff C. Braegelmann #174701
GISLASON & HUNTER LLP
Attorneys for First National Bank of Brookings
2700 South Broadway
P. O. Box 458
New Ulm, MN 56073-0458
Phone: 507-354-3111

VERIFICATION

STATE OF SOUTH DAKOTA)

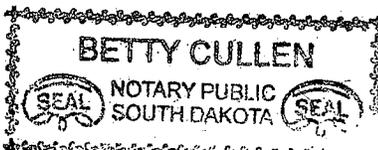
COUNTY OF Brookings) ss.

Kelly Gorder, being first duly sworn, deposes and says that she is the Collection Lead for the First National Bank of Brookings, that she has reviewed the allegations of the foregoing Notice of Hearing and Motion for Relief from Stay, and that the same are true of her knowledge, except as to matters stated on information and belief, and as to those matters, she believes them to be true.

Kelly Gorder
Kelly Gorder

Subscribed and sworn to before me this 17th day of September, 2004.

Betty Cullen



My commission expires 4-30-07

NULIB:186891.1

J-469-06-9240 T-468 743237 19702201 KHS

CONSUMER PAPER RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT No. _____ Date NOVEMBER 21st, 2003	Seller BROOKINGS AUTO MALL 2323 EAST 6TH STREET BROOKINGS SD 57006 We and us mean the Seller above, its successors and assigns.	Buyer JOHN YEAROUS TASHA YEAROUS 2040 CO RD 103 LAKE BRUNTON WI 56149 You and you mean each Buyer above, and guarantor, jointly and individually.
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SALE: You agree to purchase from us, on a time basis, subject to the terms and conditions of this contract and security agreement (Contract), the Motor Vehicle (Vehicle) and services described below. The Vehicle is sold in its present condition, together with the usual accessories and attachments.

Description of Motor Vehicle Purchased Year 2003 Make PONTIAC Model MONTANA	VIN 1GNDK03E03D178438 Lic. No./Year _____ <input type="checkbox"/> New <input checked="" type="checkbox"/> Used	Other: _____
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Description of Trade-In
**1991 BUICK REGAL 2G4WD54L5M1124909
1999 DODGE TRUCK DURANGO 1B4HS2AY0P531545**

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 \$ 24778.00, plus finance charges accruing on the unpaid balance at the rate of 8.99 % per year from today's date until maturity. Finance charges accrue on a 365 day basis. After maturity, or after you default and we demand payment, we will earn finance charges on the unpaid balance at 8.99 % per year. 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.

DOWN PAYMENT: You also agree to pay, or apply to the Cash Price, on or before today's date, any cash, rebate and 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

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	AMOUNT FINANCED The amount of credit provided to you or on your behalf.	TOTAL OF PAYMENTS The amount you will have paid when you have made all scheduled payments.	TOTAL SALE PRICE The total cost of your purchase on credit, including your down payment of
<u>8.99</u> %	\$ <u>7536.92</u>	\$ <u>24778.00</u>	\$ <u>32317.97</u>	\$ <u>765.65</u> \$ <u>33083.57</u>

Payment Schedule: Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
72	448.86	MONTHLY BEGINNING: 01/11/2004

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% OF THE UNPAID INSTALLMENT OR \$5.00, WHICHEVER IS GREATER
Prepayment: If you pay off this Contract early, you will not have to pay a penalty.
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.

ITEMIZATION OF AMOUNT FINANCED

Vehicle Price (incl. sales tax of \$ <u>N/A</u>)	\$ <u>24999.00</u>
Service Contract, Paid to: <u>N/A</u>	\$ <u>N/A</u>
Amount to Finance line e, (if e. is negative)	\$ <u>N/A</u>
Cash Price	\$ <u>24999.00</u>
Manufacturer's Rebate	\$ <u>N/A</u>
Cash Down Payment	\$ <u>N/A</u>
Deferred Down Payment	\$ <u>N/A</u>
a. Total Cash/Rebate Down	\$ <u>N/A</u>
b. Trade-In Allowance	\$ <u>16600.00</u>
c. Less: Amount owing	\$ <u>15734.35</u>
Paid to: <u>WELLS FARGO AUTO FINANCE</u>	
d. Net Trade-In (b. minus c.)	\$ <u>765.65</u>
e. Net Cash/Trade-In (a. plus d.)	\$ <u>765.65</u>
Down Payment (e.; disclose as \$0 if negative)	\$ <u>765.65</u>
Unpaid Balance of Cash Price	\$ <u>24233.35</u>
Paid to Public Officials - Filing Fees	\$ <u>N/A</u>
Insurance Premiums*	\$ <u>N/A</u>
To: <u>TWIN CITY FIRE INS CO</u>	\$ <u>495.00</u>
To: <u>BROOKINGS AUTO MALL</u>	\$ <u>49.65</u>
To: <u>N/A</u>	\$ <u>N/A</u>
Total Other Charges/Amounts Pd. to Others	\$ <u>544.65</u>
Less: Prepaid Finance Charges	\$ <u>N/A</u>
Amount Financed	\$ <u>24778.00</u>

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.

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

Buyer John Yearous d/o/b _____ Buyer Tasha Yearous d/o/b _____
 Buyer John Yearous d/o/b _____ Buyer Tasha Yearous 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 \$ N/A. If you get insurance from or through us you will pay \$ N/A for _____ of coverage.

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

Liability insurance coverage for personal liability and property damage caused to others is not included in this Contract unless checked and indicated.

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

Buyer John Yearous Buyer Tasha Yearous

SERVICE CONTRACT: With your purchase of the Vehicle, you agree to purchase a Service Contract to cover _____

_____ This Service Contract will be in effect for _____

ASSIGNMENT: This Contract and Security Agreement is assigned to FIRST NATIONAL BANK
 the Assignee, phone (605) 696-2260. This assignment is made under the terms of a separate agreement. under the terms of the ASSIGNMENT BY SELLER on page 2. The assignment is made with recourse.
 Seller: By John Yearous 11/21/2003

Buyer John Yearous Buyer Tasha Yearous

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.

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 Yearous 11/21/2003
 Signature JOHN YEAROUS Date

Tasha Yearous 11/21/2003
 Signature TASHA YEAROUS Date

Seller: By John Yearous

EXHIBIT A

ADDITIONAL TERMS OF THIS CONTRACT AND SECURITY AGREEMENT

GENERAL TERMS: You have been given the opportunity to purchase the Vehicle and described services for the Cash Price or the Total Sale Price. The Total Sale Price is the total price of the Vehicle and any services you pay them over time. You agreed to purchase the terms over time. The Total Sale Price shown in the TRUTH IN LENDING DISCLOSURES assumes that all payments will be made as scheduled. The actual amount you will pay may be more or less depending on your payment record.

We do not intend to charge or collect, and you do not agree to pay, any finance charge or fee, that is more than the maximum amount permitted for this sale by state or federal law. If you pay a finance charge or fee that is contrary to this provision, we will, instead, apply it to reduce the principal balance, and when the principal has been paid in full, refund it to you.

You understand and agree that some payments to third parties as a part of this Contract may involve money retained by us or paid back to us as commissions or other remuneration.

If any section or provision of this Contract is not enforceable, the other terms will remain part of this Contract.

The law of South Dakota will govern this transaction. It is also governed by applicable federal law and regulations. In the event of a dispute, the exclusive forum, venue, and place of jurisdiction will be in South Dakota, unless otherwise required by law.

NAME AND LOCATION: Your name and address indicated on page 1 are your exact legal name and your principal residence. You will provide us with at least 30 days notice prior to changing your name or principal residence.

PREPAYMENT: You may prepay this Contract in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until you pay in full.

A refund of any prepaid, unearned insurance premiums may be obtained from us or from the insurance company named in your policy or certificate of insurance.

OWNERSHIP AND DUTIES TOWARD PROPERTY: By giving us a security interest in the Property, you represent and agree to the following:

- A. Our security interest will not extend to consumer goods unless you acquire rights to them within 10 days after we enter into this Contract, or they are installed in or attached to the Vehicle.
B. You will defend our interests in the Property against claims made by anyone else. You will do whatever is necessary to keep our claim to the Property ahead of the claim of anyone else.
C. The security interest you are giving us in the Property comes ahead of the claim of any other of your general or secured creditors. You agree to sign any additional documents or provide us with any additional information we may require to keep our claim to the Property ahead of the claim of anyone else. You will not do anything to change our interest in the Property.
D. You will keep the Property in your possession in good condition and repair. You will use the Property for its intended and lawful purposes. Unless otherwise agreed in writing, the Property will be located at your address listed on page 1 of this Contract.
E. You will not attempt to sell the Property (unless it is property identified inventory) or otherwise transfer any rights in the Property to anyone else, without our prior written consent.
F. You will pay all taxes and assessments on the Property as they become due.
G. You will notify us of any loss or damage to the Property. You will provide us reasonable access to the Property for the purpose of inspection. Our entry and inspection must be accomplished lawfully, and without breaching the peace.

DEFAULT: You will be in default on this Contract if any one of the following occurs (except as prohibited by law):

- A. You fail to make a payment within 30 days of when it is due.
B. You fail to perform any obligation that you have undertaken in this Contract.
C. We, in good faith, believe that you cannot, or will not, pay or perform the obligations you have agreed to in this Contract.
If you default, you agree to pay our costs for collecting amounts owing, including, without limitation, court costs, and fees for repossession, repair, storage and sale of the Property securing this Contract.

If an event of default occurs as to any one of you, we may exercise our remedies against any or all of you.

REMEDIES: If you are in default on this Contract, we have all of the remedies provided by law and this Contract:

- A. We may require you to immediately pay us, subject to any refund required by law, the remaining unpaid balance of the amount financed, finance charges, and all other agreed charges.
B. We may pay taxes, assessments or other liens that are levied against the Property if you have not done so. We are not required to do so. Any amount we pay will be added to the amount you owe us and will be due immediately. This amount will earn finance charges from the date paid at the post-maturity rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full.
C. We may require you to make the Property available to us at a place we designate that is reasonably convenient to you and us.
D. We may immediately take possession of the Property by legal process or self-help, but in doing so we may not breach the peace or unlawfully enter onto your premises. We may then sell the Property and apply what we receive as provided by law to our reasonable expenses and then toward your obligations.
E. Except when prohibited by law, we may sue you for additional amounts if the proceeds of a sale do not pay all of the amounts you owe us.

By choosing any one or more of these remedies, we do not waive our right to later use another remedy. By deciding not to use any remedy, we do not give up our right to consider the event a default if it happens again.

You agree that if any notice is required to be given to you of an intended sale or transfer of the Property, notice is reasonable if mailed to your last known address, as reflected in our records, at least 10 days before the date of the intended sale or transfer (or such other period of time as is required by law).

You agree that, subject to your right to recover such property, we may take possession of personal property left in or on the Property securing this Contract and taken into possession as provided above.

RETURNED CHECK CHARGE: If you make any payment required by this Contract with a check or negotiable instrument that is returned or dishonored, you agree to pay a fee of \$30.00.

INSURANCE: You agree to buy property insurance on the Property protecting against loss and physical damage and subject to a maximum deductible amount indicated in the PROPERTY INSURANCE section, or as we will otherwise require. You will name us as loss payee on any such policy. In the event of loss or damage to the Property, we may require additional security or assurances of payment before we allow insurance proceeds to be used to repair or replace the Property. You agree that if the insurance proceeds do not cover the amounts you still owe us, you will pay the difference. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. You will keep the insurance in full force and effect until this Contract is paid in full.

If you fail to obtain or maintain this insurance, or name us as a loss payee, we may obtain insurance to protect our interest in the Property. This insurance may include coverages not required of you. This insurance may be written by a company other than the one you would choose. It may be written at a rate higher than a rate you could obtain if you purchased the property insurance required by this Contract. We will add the premium for this insurance to the amount you owe us. Any amount we pay will be due immediately. This amount will earn finance charges from the date paid at the post-maturity rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full.

OBLIGATIONS INDEPENDENT: Each person who signs this Contract agrees to pay the Contract according to its terms. This means that you must pay this Contract even if someone else has also signed it.

- A. You must pay this Contract even if someone else has also signed it.
B. We may release any co-buyer or guarantor and you will still be obligated to pay this Contract.
C. We may release any security and you will still be obligated to pay this Contract.
D. If we give up any of our rights, it will not affect your duty to pay this Contract.
E. If we extend new credit or renew this Contract, it will not affect your duty to pay this Contract.

WARRANTY: Warranty information is provided to you separately.

WAIVER: To the extent permitted by law, you agree to give up your rights to require us to do certain things. We are not required to: (1) demand payment of amounts due; (2) give notice that amounts due have not been paid, or have not been paid in the appropriate amount, time or manner; or, (3) give notice that we intend to make, or are making, this Contract immediately due.

THIRD PARTY AGREEMENT

By signing below you agree to give us a security interest in the Property described in the SALE section. You also agree to the terms of this Contract, including the WAIVER section above, except that you will not be liable for the payments it requires. Your interest in the Property may be used to satisfy the Buyer's obligation. You agree that we may renew, extend, change this Contract, or release any party or property without releasing you from this Contract. We may take these steps without notice or demand upon you. You acknowledge receipt of a completed copy of this Contract.

Signature Date

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

IF YOU ARE BUYING A USED VEHICLE, THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

ASSIGNMENT BY SELLER

Seller sells and assigns the Retail Installment Contract and Security Agreement, (Contract), to the Assignee, its successors and assigns, including all its rights, title and interest in this Contract, and any guarantees executed in connection with this Contract. Seller gives Assignee full power, either in its own name or in Seller's name, to take all legal or other actions which Seller could have taken under this Contract. (SEPARATE AGREEMENT: If this Assignment is made under the terms of a separate agreement as indicated on page 1, the terms of this assignment are described in a separate writing(s) and not as provided below.)

- Seller warrants:
A. This Contract represents a sale by Seller to Buyer on a time payment basis and not on a cash basis.
B. The statements contained in this Contract are true and correct.
C. The down payment was made by the Buyer in full.
D. This sale was completed in accordance with all applicable federal and state laws and regulations.
E. This Contract is valid and enforceable in accordance with its terms.
F. The names and signatures on this Contract are not forged, fictitious or assumed, and are true and correct.
G. This Contract is vested in the Seller free of all liens, is not subject to any claims or defenses of the Buyer, and may be sold or assigned by the Seller.
H. A completely filled-in copy of this Contract was delivered to the Buyer at the time of execution.
I. The Vehicle has been delivered to the Buyer in good condition and has been accepted by Buyer.
J. Seller has or will perfect a security interest in the Property in favor of the Assignee.

If any of these warranties is breached or untrue, Seller will, upon Assignee's demand, purchase this Contract from Assignee. The purchase shall be in cash in the amount of the unpaid balance (including finance charges) plus the costs and expenses of Assignee, including attorneys' fees. Seller will indemnify Assignee for any loss sustained by it because of judicial set-off or as the result of a recovery made against Assignee as a result of a claim or defense Buyer has against Seller.

Seller waives notice of the acceptance of this Assignment, notice of non-payment or non-performance and notice of any other remedies available to Assignee. Assignee may, without notice to Seller, and without affecting the liability of Seller under this Assignment, compound or release any rights against, and grant extensions of time for payment to be made, to Buyer and any other person obligated under this Contract.

UNLESS OTHERWISE INDICATED ON PAGE 1, THIS ASSIGNMENT IS WITHOUT RECOURSE.

WITH RECOURSE: If this Assignment is made with recourse as indicated on page 1, Assignee takes the Assignment with certain rights of recourse against Seller. Seller agrees that if the Buyer defaults on any obligation of payment or performance under this Contract, Seller may, upon demand, repurchase this Contract for the amount of the unpaid balance, including finance charges, due at that time.

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
445 MINNESOTA ST., ST. PAUL, MN 55101

CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

YEAROUS JOHN DELMAR
YEAROUS TASHA LYNN
2040 COUNTY RD 103
LAKE BENTON MN 56149

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

PERMITS SD 571 00:53 02/13

KXD422

03 Year	PONT Make	ESMON Model	C0410S316 Title NR.
1GMDX03E03D178438 VIN	11/21/03 Security Date	NO Rebuilt	

1ST SECURED PARTY

LIEN HOLDER

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

FIRST NATL BANK BROOKINGS
BX 5057
BROOKINGS SD 57006-5057

30



EXHIBIT B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

Bky No. 04-34329-GFK

In re:

John Delmar Yearous,
Tasha Lynn Yearous, and
Party Lite Gifts & Assessories,
Debtors.

MEMORANDUM OF LAW

First National Bank of Brookings (the "Bank") submits this Memorandum of Law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

The facts are stated in the Motion. Capitalized terms used herein and not otherwise defined have the meanings given to them in the Motion.

ARGUMENT

Pursuant to section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. § 362(d)(1). Debtors have failed to make the payments required by their Contract with the Bank and have otherwise failed to provide adequate protection of the Bank's interest in the Vehicle. Such failure constitutes cause, within the meaning of section 362(d)(1), entitling the Bank to relief from the stay. United Savings Ass'n of Texas v. Timbers of Inwood Forest Assoc., Ltd. (In re Timbers of Inwood Assoc., Ltd.), 484 U.S. 365, 108 S. Ct. 626, 98 L. Ed.2d 740 (1988).

Pursuant to section 362(d)(2) of the Bankruptcy Code, relief from the stay is also appropriate where debtors have no equity in the subject vehicle and the vehicle is not necessary to

an effective reorganization. 11 U.S.C. § 362(d)(2). In re Albany Partners, Ltd., 749 F.2d 670 (11th Cir. 1984). In the present case, the balance due the Bank on the Contract is \$24,296.47. On information and belief, the fair market value of the Vehicle is \$18,950.00, but Debtors have valued the Vehicle at approximately \$16,000.00. Clearly, Debtors have no equity in the Vehicle. Because this is a Chapter 7 case, the Vehicle is not necessary to an effective reorganization.

Accordingly, the Bank is entitled to an order terminating the automatic stay and waiving the 10-day stay of order, and authorizing the Bank to take possession of and foreclose its security interest in the Vehicle.

Dated this 16th day of September, 2004.

/e/ Jeff C. Braegelmann
Jeff C. Braegelmann #174701
GISLASON & HUNTER LLP
Attorneys for First National Bank of Brookings
2700 South Broadway
P. O. Box 458
New Ulm, MN 56073-0458
Phone: 507-354-3111

NULIB:186894.1

(FORM DD)

U. S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: John and Tasha Yearous, and
Party Lite Gifts & Assessories,

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Debtor(s): Case Number BKY 04-34329-GFK

Kari Gleisner, employed by Gislason & Hunter LLP, attorney(s) licensed to practice law in this court, with office address of 2700 South Broadway, P.O. Box 458, New Ulm, Minnesota 56073, declares that on September 20, 2004, I served the annexed **Notice of Hearing and Motion 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 the same in an envelope with first class mail postage prepaid and depositing same in the post office at New Ulm, Minnesota, addressed to each of them as follows:

Mr. John Yearous
2040 County Road 103
Lake Benton, MN 56149

Ms. Tasha Yearous
2040 County Road 103
Lake Benton, MN 56149

Mr. William P. Scott
Attorney at Law
717 Sixth Street SE
P. O. Box 689
Pipestone, MN 56165-0689

Mr. Charles W. Ries
Maschka, Riedy & Ries
201 North Broad Street
P. O. Box 7
Mankato, MN 56002-0007

U.S. Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

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

Executed: September 20, 2004.

Signed: /e/ Kari Gleisner

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

Bky No. 04-34329-GFK

In re:

John Delmar Yearous,
Tasha Lynn Yearous, and
Party Lite Gifts & Assessories,
Debtors.

ORDER FOR RELIEF FROM STAY

At St. Paul, Minnesota.

The above-entitled matter came before the Court on October 4, 2004, on the motion of First National Bank of Brookings (the "Bank") seeking relief from the automatic stay of section 362(a) of the Bankruptcy Code and the 10-day stay of order pursuant to Federal Bankruptcy Rule 4001(a)(3). Appearances were noted in the Court's record. Based upon the proceedings had on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling the Bank to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of section 362(a) of the Bankruptcy Code is immediately terminated and the 10-day stay of order pursuant to the Federal Bankruptcy Rule 4001(a)(3) is waived as to the Bank, and the Bank is authorized to take possession of and foreclose its security interest in the subject 2003 Pontiac Montana, vehicle identification number 1GMDX03E03D178438.

Dated this _____ day of _____, 2004.

Honorable Gregory F. Kishel
Chief United States Bankruptcy Judge

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