

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Deborah Pace  
Lawrence Pace

NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY

Debtors

Chapter 13, Case No. 04-40460

-----  
TO: Deborah Pace and Lawrence Pace, INCLUDING TRUSTEE AND OTHER  
INTERESTED PARTIES

1. National City Home Loan Services, Inc., (*Movant*), a corporation, by its undersigned attorneys, 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 2:00 pm on October 14, 2004, in Courtroom 8 West, 301 U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415 or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than on October 11, 2004, 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 October 5, 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 Rules of Bankruptcy Procedure 5005 and Local Rule 1070-1, and is a core

proceeding. The petition commencing this Chapter 13 case was filed on February 2, 2004. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rules of Bankruptcy Procedure 4001. This motion is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 1201-1215. Movant requests relief with respect to a mortgage lien encumbering real property of Debtors.

6. Debtors above-named are the owners of certain real property located at 21759 Durant Street Northeast, East Bethel, MN 55011, legally described as follows, to-wit:

The North 1/2 of the Southwest 1/4 of the Southwest 1/4 of the Northwest 1/4 of Section 12, Township 33, Range 23, according to the plat thereof on file and of record in Anoka County, State of Minnesota.

7. The indebtedness of Deborah Pace and Lawrence Pace is evidenced by a Promissory Note and Mortgage dated July 24, 2003, filed of record in the Anoka County Recorder's office on July 31, 2003, and recorded as Document No. 1830986. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A. Said mortgage was subsequently assigned to Movant.

8. Movant has filed a Proof of Claim for delinquent payments for the months. Upon information and belief, said Plan has now been confirmed.

9. Pursuant to said Plan, the Debtors were to maintain monthly payments due and payable pursuant to the indebtedness to Movant outside the Plan.

10. The Debtors have failed to pay the monthly payments on the indebtedness, outside the Plan for the months of June 1, 2004 to the present date and as of the hearing date October 1, 2004 will be due for a total delinquency of \$6,160.10 together with reasonable attorneys fees and costs incurred pursuant to the terms of the note and mortgage.

11. By reason of the foregoing, Debtors are in default on payments under the note, mortgage and the Chapter 13 Plan. Movant is inadequately secured and entitled to have the automatic stay lifted and vacated so it can commence foreclosure against the property under the mortgage pursuant to Minnesota Statutes.

WHEREFORE, Movant by its undersigned attorney, moves the Court for an Order that the automatic stay provided by 11 U.S.C. Section 362 (A) be terminated to permit Movant to foreclose its mortgage on the subject property, and for such other and further relief as may be just and equitable.

Dated: September 22, 2004

USSET & WEINGARDEN P.L.L.P

By:     /E/ Paul A. Weingarden/Brian H. Liebo  
Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Deborah Pace  
Lawrence Pace

AFFIDAVIT OF PETITIONER

Debtors

Chapter 13, Case No. 04-40460  
-----

STATE OF PENNSYLVANIA )

COUNTY OF Allegheny )

MICHAEL CARR, being first duly sworn, deposes and states on oath that she/he is employed by National City Home Loan Services, Inc., the movant in this action, that she/he has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her/his knowledge to the best of her/his information.



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Subscribed and sworn to before me this  
27 day of August, 2004.

Charlene Jones  
Notary Public

Notarial Seal  
Charlene M. Jones, Notary Public  
Pittsburgh, Allegheny County  
My Commission Expires Jan. 17, 2005  
Member, Pennsylvania Association of Notaries

1830986

12.33.23.23.0004a

[Space Above This Line For Recording Data]

## MORTGAGE

Return To  
First Franklin Financial Corporation  
2150 North First Street  
San Jose, CA 95131  
Loan number: 0031742562/5,516

This loan is being made pursuant to section 47.204 of the Minnesota Statutes.

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated July 24, 2003 together with all Riders to this document.

MINNESOTA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3024 1/01

 -G(MN) 10001  
Page 1 of 15

In this

*JR JCP*

VNIP MORTGAGE FORMS (9001521-7291)



Document # L074MN

(B) "Borrower" is  
DEBORAH PACE  
, and LAWRENCE PACE, wife and husband

Borrower is the mortgagor under this Security Instrument  
(C) "Lender" is FIRST FRANKLIN FINANCIAL CORPORATION

Lender is a Corporation  
organized and existing under the laws of Delaware  
Lender's address is 2150 North First St.,  
San Jose, CA 95131

Lender is the mortgagee under this Security Instrument  
(D) "Note" means the promissory note signed by Borrower and dated July 24, 2003

The Note states that Borrower owes Lender  
ONE HUNDRED SEVENTY TWO THOUSAND & 00/100 Dollars  
(U.S. \$ 172,000.00 ) plus interest Borrower has promised to pay this debt in regular Periodic  
Payments and to pay the debt in full not later than August First, 2033

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the  
Property"

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges  
due under the Note, and all sums due under this Security Instrument, plus interest

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following  
Riders are to be executed by Borrower [check box as applicable]:

- |   |   |  |
|---|---|--|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> Second Home Rider                                 |
| <input type="checkbox"/> Balloon Rider                    | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider                                  |
| <input type="checkbox"/> VA Rider                         | <input type="checkbox"/> Biweekly Payment Rider         | <input checked="" type="checkbox"/> Other(s) [specify]<br>Prepayment Rider |

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations,  
ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final,  
non-appealable judicial opinions

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other  
charges that are imposed on Borrower or the Property by a condominium association, homeowners  
association or similar organization

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by  
check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic  
instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit  
or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller  
machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse  
transfers

(K) "Escrow Items" means those items that are described in Section 3

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation, or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U S C Section 2601 et seq ) and its implementing regulation, Regulation X (24 C F R Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument

**TRANSFER OF RIGHTS IN THE PROPERTY**

This Security Instrument secures to Lender (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note, and (ii) 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 and Lender's successors and assigns, with power of sale, the following described property located in the county

of Anoka

[Name of Recording Jurisdiction]

[Type of Recording Jurisdiction]

Legal Description attached hereto and made a part hereof

Adjustable Rate Rider attached hereto and made a part hereof

Prepayment Rider attached hereto and made a part hereof

Parcel ID Number: 123323230004  
21759 DURANT STREET NE  
EAST BETHEL  
("Property Address")

which currently has the address of  
[Street]  
[City], Minnesota 55011 [Zip Code]

**Exhibit A**

**Legal Description:**

THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4  
OF SECTION 12, TOWNSHIP 33, RANGE 23, ACCORDING TO THE PLAT THEREOF ON FILE AND  
OF RECORD IN ANOKA COUNTY, STATE OF MINNESOTA.

1081

FORM HP004

**ABSTRACT**

Receipt # 3127043/42542  Incorrect/No Reference #  
 Date/Time 7/31/16:30  Non standard Document  
 Document Order 1 of 1  Certified Copy  
 PINs \_\_\_\_\_ **20 PAGES**  
 Recordability enl  
 Filing Fees \$ 20  
 Copy/Additional Pg Fees \$ 2  Tax Lien/Release  
 Well Cert Fees \$ \_\_\_\_\_  Transfer  
 Incomplete Form  Division  
   Missing Attachment  Status  
   ] No Legal Description  New legal Description  
   ] Non-existent Legal Description  GAC  
   ] Part(s) Illegible  No Change

DOCUMENT NO 1830986.0 ABSTRACT  
**ANOKA COUNTY MINNESOTA**

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED IN THIS OFFICE  
 FOR RECORD ON JUL 31 2003  
 AT 4:30 PM AND WAS DULY RECORDED  
 FEES AND TAXES IN THE AMOUNT OF \$425.60 PAID  
 2003127043

RECEIPT NO  
 MAUREEN J DEVINE  
 ANOKA COUNTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES  
 BY KHJ  
 DEPUTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES

Minnetitle L.L.C.  
 69 N. Lako St. Suite 14  
 Forest Lake, MN 55025

F2686A

1900639

Recording requested by  
AND RETURN TO  
National City Home Loan Services  
150 Allegheny Center Mall  
Pittsburgh, PA 15230  
Acct# 1044134402

12.33.23.23.0004

Corporate Assignment of Mortgage

Allegheny County, State of Pennsylvania  
Date of Assignment: 2/13/2004

Assignor: First Franklin Financial Corporation, A Delaware Corporation  
2150 North First Street, Suite 600  
San Jose, CA 95131

Assignee: National City Home Loan Services, a Delaware Corporation,  
150 Allegheny Center Mall  
Pittsburgh, PA 15212

Executed by: Deborah Pace & Lawrence Pace

To: First Franklin Financial Corporation

Mortgage Dated, July 24, 2003 and Recorded on: July 31, 2003 as Book N/A Page N/A  
OR AS INSTRUMENT / Doc# 1830986 Amount: \$172,000.00

Parcel Number: 123323230004

Property Address 21759 Durant St NE, East Bethel, Minnesota 55011

See Exhibit "A" Attached Hereto & Made A Part Hereof

Know All Men By These Presents that in consideration of the sum of Ten and No/100ths Dollars and other good valuable consideration, paid to the above Named assignor, the receipt and sufficiency of which is hereby acknowledged the Said Assignor hereby assigns unto the above named Assignee, the said Mortgage Having an original principal sum of \$172,000.00 interest, secured thereby, Together with all moneys now owing or that may hereafter become due or owing in Respect thereof, and the full benefit of all the powers and of all the covenants and Provisos therein contained, and the said Assignor hereby grants and conveys unto the said Assignee, the Assignor's beneficial interest under the mortgage.

To Have and To Hold the said Mortgage and Note, and also the said property  
Unto the said Assignee forever, subject to the terms contained in said Mortgage  
And Note. Signed on this day, February 13, 2004.

Witness *Mary J. McElaine*  
Witness *Mary J. McElaine*

First Franklin Financial Corporation  
By *Eileen J. Gonzales*  
Eileen J. Gonzales  
Assistant Vice President

State of: Pennsylvania  
County of: Allegheny



On February 13, 2004, before the undersigned, a Notary Public in and for said County and State, on this day personally appeared, Eileen J. Gonzales, Assistant Vice President of First Franklin Financial Corporation, known to me to be the person and officer whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

*Nancy E. Hopkins*  
Notary Public

Notarial Seal  
Nancy E. Hopkins, Notary Public  
City of Pittsburgh, Allegheny County  
My Commission Expires May 14, 2005  
Member, Pennsylvania Association of Notaries

0031742562

Exhibit A

Legal Description:

THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4  
OF SECTION 12, TOWNSHIP 33, RANGE 23, ACCORDING TO THE PLAT THEREOF ON FILE AND  
OF RECORD IN ANOKA COUNTY, STATE OF MINNESOTA.

*CED*  
CERTIFICATE

L081

FORM 11P004

**ABSTRACT**

Recorp # <u>4037560/30-</u>	<input type="checkbox"/> Incorrect/No Reference #
Date/Time <u>2/26/16:20</u>	<input checked="" type="checkbox"/> Non-standard Document
Document Order <u>1</u> of <u>1</u>	<input type="checkbox"/> Certified Copy
PPNs <u>RP</u>	
Recordability <u>RP</u>	
Filing Fees \$ <u>30</u>	<input type="checkbox"/> Tax Lien/Release
Copy/Additional Pg Fees \$	<input type="checkbox"/> Transfer
Web Cert Fees \$	<input type="checkbox"/> Division
Incomplete Form	<input type="checkbox"/> Status
Missing Attachment	<input type="checkbox"/> Home Legal Description
No Legal Description	<input type="checkbox"/> GAC
Non-existent Legal Description	<input type="checkbox"/> Deferred Specials
Part(b) block(s)	<input checked="" type="checkbox"/> No Change

DOCUMENT NO 1900639.0 ABSTRACT  
**ANOKA COUNTY MINNESOTA**

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED IN THIS OFFICE  
 FOR RECORD ON **FEB 26 2004** AND WAS DULY RECORDED  
 AT **4:20 PM** FEES AND TAXES IN THE AMOUNT OF **\$30.00** PAID

RECEIPT NO **2004037560**

**MALURFEN J. D. MAE**  
 ANOKA COUNTY PROPERTY TAX ADMINISTRATION/RECORDER/REGISTRAR OF TITLES

BY **GSS**  
 DEPUTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Deborah Pace  
Lawrence Pace

MEMORANDUM OF LAW

Debtors

Chapter 13, Case No. 04-40460  
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11 U.S.C. Section 362(d) provides that on request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under section (a) of this section for cause, including lack of adequate protection of an interest in property of such party in interest. Failure of a Chapter 13 debtor to make postconfirmation payments to a mortgagee is sufficient cause for relief from the automatic stay. Reinbold vs. Dewey County Bank, 942 F.2d 1304 (8th Cir. 1991). Following the debtors' filing of the petition on February 2, 2004 no payment has been made to movant for the month(s) of June 1, 2004 to the present and as of the hearing date October 1, 2004 will be due. Accordingly, cause exists for the granting of relief from the automatic stay.

WHEREFORE, National City Home Loan Services, Inc. respectfully requests this Court to grant movant relief from the automatic stay of 11 U.S.C. Section 362(a).

Dated: September 22, 2004. USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo  
Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888

U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Deborah Pace  
Lawrence Pace

Debtors

UNSWORN DECLARATION  
FOR PROOF OF SERVICE

Chapter 13, Case No. 04-40460  
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Erin Kay Buss, employed on this date by USSET & WEINGARDEN, attorney(s) licensed to practice law in this court, with office address of Suite 120, 4500 Park Glen Road, Minneapolis, Minnesota 55416, upon penalty of perjury, declares that on September 22, 2004, I served the annexed Notice of Hearing and Motion for Relief from Automatic Stay upon each of the entities named below by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Office of the United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Jasmine Z. Keller  
Chapter 13 Trustee  
310 Plymouth Building, 12 South 6th Street  
Minneapolis, MN 55402

Curtis K. Walker, Esq.  
Attorney at Law  
4356 Nicollet Avenue South  
Minneapolis, MN 55409

Deborah Pace  
Lawrence Pace  
21759 Durant Street Northeast  
East Bethel, MN 55011

/E/ Erin Kay Buss  
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Deborah Pace  
Lawrence Pace

ORDER

Debtors.

Chapter 13, Case No. 04-40460  
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The above entitled matter came on for hearing upon motion of National City Home Loan Services, Inc., (*Movant*) pursuant to 11 U.S.C. Section 362 on October 14, 2004 at the U.S. Bankruptcy Court, Minneapolis, Minnesota. Appearances were as noted in the record. 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:

The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

The North 1/2 of the Southwest 1/4 of the Southwest 1/4 of the Northwest 1/4 of Section 12, Township 33, Range 23, according to the plat thereof on file and of record in Anoka County, State of Minnesota.

Movant may proceed to foreclose its mortgage in accordance with Minnesota Statutes. Movant's request for attorneys fees and costs shall not be considered as this is governed by state law. Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this order is effective immediately.

Dated this \_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Judge of the Bankruptcy Court