

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re: Mark W. Nelson,

Debtor: Chapter 7 Case  
Case No. BKY 04-44732-RJK.

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**NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM STAY**

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TO: The Debtor, Debtor's Attorney, Chapter 7 Trustee, United States Trustee, and the other parties in interest specified in Local Rule 1204(a).

1. **CitiFinancial Services, Inc. (Movant)**, a secured creditor of the Debtor 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 2:00 o'clock p.m., on November 4, 2004, before the Honorable Robert J. Kressel, in Courtroom 8 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota, 55415, or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than October 28, 2004, which is seven (7) days before the time set for the hearing (including Saturdays, Sundays, and holidays), or filed and served by mail not later than October 25, 2004, which is seven (7) days before the time set for the hearing (including Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT A HEARING.**

4. This motion is filed pursuant to Bankruptcy Rule 4001 and Local Rule 9013-2, and Movant seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain real property owned by the Debtor and subject to Movant's first mortgage lien.

5. The Petition commencing this Chapter 7 Case was filed on August 24, 2004, and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §157(a), §1334, 11 U.S.C. §362(d), Bankruptcy Rule 5005, Local Rule 1070-1 and other applicable rules. This proceeding is a core proceeding.

6. By certain mortgage dated May 2, 2003, in the original principal amount of \$153,510.99 (**Mortgage**), Movant acquired a first mortgagee's interest in the following real property (**Property**):

Lot 5, except the East 13 feet thereof, Block 8, Valley Acres.

The Mortgage was filed for record in the office of the County Recorder, in and for Hennepin County, Minnesota, on May 9, 2003, as document number 8040001.

7. The subject property has a market value of \$165,000.00. The total amount of debt secured by the subject property is \$156,959.35 including Movant's mortgage and delinquent real estate taxes. Hence, Debtor has little or no actual equity in the property.

8. Debtor's three (3) month delinquency under the terms of the Mortgage constitute cause, within the meaning of 11 U.S.C. §362(d)(1), entitling Movant to relief from the automatic stay. Movant does not have, and has not been offered, adequate protection of its interest in the Property.

**WHEREFORE**, Movant, by its undersigned attorney, moves the Court for an order modifying the automatic stay of 11 U.S.C. §362(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as the Court may deem to be just, fair and equitable.

Dated this 6<sup>th</sup> day of October, 2004.

**PETERSON, FRAM AND BERGMAN**  
A Professional Association

BY: /e/ Steven H. Bruns  
Steven H. Bruns  
Atty. Reg. #14888X  
**Attorneys for Movant**  
Suite 300, 50 East Fifth Street  
St. Paul, Minnesota 55101  
Telephone: (651) 291-8955

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re: Mark W. Nelson,

Debtor: Chapter 7 Case  
Case No. BKY 04-44732-RJK.

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

STATE OF TEXAS )  
 ) ss.  
COUNTY OF DALLAS \_\_\_\_\_ )

I, LAURA PHILLIPS, your affiant, being first duly sworn on oath, state as follows:

1. I am an employee of **CitiFinancial Services, Inc. (Movant)**, and I have personal knowledge of the facts stated herein.

2. I make this Affidavit in support of a motion to lift, modify or condition the bankruptcy stay.

3. Debtor is the mortgagor on a mortgage dated May 2, 2003 which covers real property located in Hennepin County and legally described as follows:

Lot 5, except the East 13 feet thereof, Block 8, Valley Acres,

and which is commonly known as: 10016 3rd Avenue South, Bloomington, MN 55420. The mortgage was given to secure a promissory note. A copy of the mortgage is attached hereto as Exhibit A and incorporated herein by this reference.

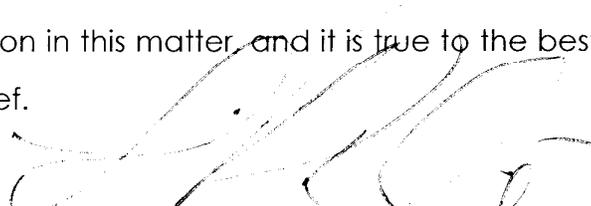
4. On or about August 24, 2004, Debtor filed a Petition under Chapter 7 of Title 11 U.S. Code in the United States Bankruptcy Court for the District of Minnesota.

5. Debtor has failed to make three (3) payments, resulting in an arrearage of \$3,434.61, excluding late charges. The total mortgage debt is \$155,475.60 which includes accrued interest through October 1, 2004. Thereafter, interest accrues on the unpaid principal balance at \$34.14 per day.

6. Based upon information and belief, the subject property has a market value of \$165,000.00. The total amount of debt secured by the subject property is \$156,959.35 including Movant's mortgage and delinquent real estate taxes.

7. I have read the Motion in this matter, and it is true to the best of my knowledge, information and belief.

Further, I saith not.



LAURA PHILLIPS, ASSISTANT SECRETARY

Subscribed and sworn to before me  
this 4th day of October, 2004.



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Notary Public



8040001

HENNEPIN COUNTY RECORDER  
HENNEPIN COUNTY, MINNESOTA

CLERK OF FILED AND C.D.

2003 MAY -9 PM 1: 12

DOCUMENT # 8040001

*William McLaughlin*  
*Miller* DEPUTY

150

*Law*

After recording, please return to:  
CITIFINANCIAL SERVICES,  
INC.  
1607 W COUNTY ROAD 42  
BURNSVILLE MN 55306

**MORTGAGE**

THIS MORTGAGE is made this 2nd day of May, 2003, between the Mortgagor,  
MARK W. NELSON, UNMARRIED (herein "Borrower"),  
and the Mortgagee, CITIFINANCIAL SERVICES, INC.,  
a corporation organized and existing under the laws of Minnesota, whose  
address is 1607 W COUNTY ROAD 42 BURNSVILLE MN 55306 (herein  
"Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. \$ 153,510.99, which indebtedness is  
evidenced by Borrower's note dated 05/02/2003 and extensions and renewals thereof (herein "Note"), providing for  
monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on  
05/07/2033;

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment  
of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the  
performance of the covenants and agreements of Borrower herein contained, Borrower does hereby grant and convey to  
Lender, with power of sale, the following described property located in the County of HENNEPIN  
State of Minnesota:

LOT 5, EXCEPT THE EAST 13 FEET THEREOF, BLOCK 8, VALLEY ACRES.  
ABSTRACT PROPERTY

Henn Co MRT  
WLV # 97526  
5/9/2003  
Paid \$368.43

which has the address of 10016 3RD AV S, BLOOMINGTON  
Minnesota 55420 (herein "Property Address");

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights,  
appurtenances and rents, all of which shall be deemed to be and remain a part of the property covered by this Mortgage;  
and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are  
hereinafter referred to as the "Property."

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

Exhibit A

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

**1. Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note and late charges as provided in the Note.

**2. Funds for Taxes and Insurance.** Subject to applicable law or a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments (including condominium and planned unit development assessments, if any) which may attain priority over this Mortgage and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Borrower shall not be obligated to make such payments of Funds to Lender to the extent that Borrower makes such payments to the holder of a prior mortgage or deed of trust if such holder is an institutional lender.

If Borrower pays Funds to Lender, the Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Mortgage that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Mortgage.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

Upon payment in full of all sums secured by this Mortgage, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 17 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Mortgage.

**3. Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 2 hereof, then to interest payable on the Note, and then to the principal of the Note.

**4. Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any.

**5. Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

**6. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

**7. Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest. If Lender required mortgage insurance as a condition of making the loan secured by this Mortgage, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

**8. Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

**9. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

**10. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

**11. Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Mortgage, but does not execute the Note, (a) is co-signing this Mortgage only to mortgage, grant and convey that Borrower's interest in the Property to Lender under the terms of this Mortgage, (b) is not personally liable on the Note or under this Mortgage, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Mortgage or the Note without that Borrower's consent and without releasing that Borrower or modifying this Mortgage as to that Borrower's interest in the Property.

**12. Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

**13. Governing Law; Severability.** The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein, "costs", "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

**14. Borrower's Copy.** Borrower shall be furnished a conformed copy of the Note and of this Mortgage at the time of execution or after recordation hereof.

**15. Rehabilitation Loan Agreement.** Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

**16. Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Mortgage. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Mortgage.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Mortgage. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Mortgage without further notice or demand on Borrower.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

**17. Acceleration; Remedies.** Except as provided in paragraph 16 hereof, upon Borrower's breach of any Mortgage, covenant or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Lender prior to acceleration shall give notice to Borrower as provided in paragraph 12 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 30 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may invoke the power of sale hereby granted and any other remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 17, including, but not limited to, reasonable attorneys' fees.

If Lender invokes the power of sale, Lender shall cause a copy of a notice of sale to be served upon the person, if any, in possession of the Property. Lender shall publish a notice of sale and the Property shall be sold at public auction in the manner prescribed by applicable law. Lender or Lender's designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all sums secured by this Mortgage; (b) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable attorneys' fees and costs of title evidence; and (c) the excess, if any, to the person or persons legally entitled thereto.

18. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Mortgage due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued at any time prior to the earlier to occur of (i) sale of the Property pursuant to the power of sale contained in this Mortgage or (ii) entry of a judgment enforcing this Mortgage if: (a) Borrower pays Lender all sums constituting the default actually existing under this Mortgage and the Note at the commencement of foreclosure proceedings under this Mortgage; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage, and in enforcing Lender's remedies as provided in paragraph 17 hereof, including, but not limited to, reasonable attorneys' fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

19. Assignment of Rents; Appointment of Receiver. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 17 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 17 hereof or abandonment of the Property, and at any time prior to the expiration of any period of redemption following sale of the Property, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

20. Release. Upon payment of all sums secured by this Mortgage, Lender shall discharge this Mortgage without charge to Borrower. Borrower shall pay all costs of recordation, if any.

21. Waiver of Homestead. Borrower hereby waives all right of homestead exemption in the Property.

22. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 22, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 22, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

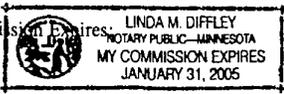
IN WITNESS WHEREOF, Borrower has executed this Mortgage.

Mark W. Nelson  
MARK W. NELSON Borrower  
Borrower

STATE OF MINNESOTA, DAKOTA County ss:

The foregoing instrument was acknowledged before me this 2nd day of May, 2003  
(date)

MARK W. NELSON, UNMARRIED  
(person acknowledging)

My Commission Expires:  LINDA M. DIFFLEY  
NOTARY PUBLIC - MINNESOTA  
MY COMMISSION EXPIRES  
JANUARY 31, 2005

Linda M. Diffley  
Notary Public

This instrument was prepared by CITIFINANCIAL SERVICES, INC.  
[Name]  
of 1607 W. County Rd 42, Burnsville, MN 55306  
[Address]

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re: Mark W. Nelson,

Debtor: Chapter 7 Case  
Case No. BKY 04-44732-RJK.

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**MEMORANDUM OF LAW**

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CitiFinancial Services, Inc. (**Movant**) submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

**FACTS**

Movant holds a valid, duly perfected mortgage on certain real property owned by Debtor. The Debtor is delinquent with respect to payments due under the mortgage for the months of July 2004 through September 2004 in a total amount of \$3,434.61, excluding late charges. The total mortgage debt is \$155,475.60 which includes accrued interest through October 1, 2004. Thereafter, interest accrues on the unpaid principal balance at \$34.14 per day.

The subject property has a market value of \$165,000.00. The total amount of debt secured by the subject property is \$156,959.35 including Movant's mortgage and delinquent real estate taxes.

**ARGUMENT**

Under §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). Debtor has failed to make payments due under the terms of the mortgage for a period of over three (3) months. Debtor has little or no actual equity in the property; hence, Movant lacks adequate protection in the form of an equity cushion in the property. Furthermore, debtor has otherwise failed to provide Movant with adequate protection of its interest in the property.

Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay. In Re Tainan, 48 B.R. 250 (Bkrtcy E.D. Pa. 1985); In Re Quinlan, 12 B.R. 516 (Bkrtcy. W.D. Wis. 1981).

Accordingly, Movant is entitled to an order terminating the stay of 11 U.S.C. §362(a) and authorizing it to foreclose its mortgage on the property.

Dated this 6th day of October, 2004.

**PETERSON, FRAM AND BERGMAN**  
A Professional Association

BY: /s/ Steven H. Bruns

Steven H. Bruns  
Atty. Reg. #14888X

**Attorneys for Movant**  
Suite 300, 50 East Fifth Street  
St. Paul, Minnesota 55101  
Telephone: (651) 291-8955

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re: Mark W. Nelson,

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UNSWORN DECLARATION  
FOR PROOF OF SERVICE

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I, Steven H. Bruns, employed by **PETERSON, FRAM AND BERGMAN, P.A.**, attorneys licensed to practice in this court, with an office at Suite 300, 50 East Fifth Street, St. Paul, MN, 55101, declare that on October 6, 2004 I served the annexed: a) Notice of Hearing and Motion for Relief from Stay, b) Affidavit in Support of Motion for Relief from Stay, c) Memorandum of Law, and d) proposed Order for Relief upon each of the parties listed below by mailing to each of them a copy of each thereof, enclosed in an envelope, first class postage prepaid, and by depositing same in the post office at St. Paul, Minnesota, directed to them at their last known addresses, as follows:

United States Trustee  
300 S 4th St # 1015  
Minneapolis MN 55415-1329

Mark W. Nelson  
10016 3rd Avenue South  
Bloomington, MN 55420

Soo Line Credit Union  
c/o Stewart Zlimen & Jungers Ltd  
430 Oak Grove Street, Suite 200  
Minneapolis, MN 55403

Randall L. Seaver  
Chapter 7 Trustee  
12400 Portland Avenue So, Suite 132  
Burnsville, MN 55337

Ian Traquair Ball, Esq.  
12 South Sixth Street, Suite 326  
Minneapolis, MN 55402

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

Signed: /e/ Steven H. Bruns

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re: Mark W. Nelson,

Debtor: Chapter 7 Case  
Case No. BKY 04-44732-RJK.

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**ORDER FOR RELIEF FROM AUTOMATIC STAY**

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The above-entitled matter came before the Court on November 4, 2004, on the motion of CitiFinancial Services, Inc. (**Movant**) seeking relief from the automatic stay of 11 U.S.C. §362(a). Based upon the statements of counsel and all of the files, records and proceedings herein, the Court now finds that cause exists entitling Movant to the requested relief.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that the automatic stay of 11 U.S.C. §362(a) is immediately terminated as to Movant; and, Movant, its successors or assigns, are hereby authorized to foreclose pursuant to Minnesota law that certain Mortgage dated May 2, 2003, filed for record in the office of the County Recorder in and for Hennepin County, Minnesota, on May 9, 2003, and recorded as Document No. 8040001 and covering real property located in Hennepin County, Minnesota, which is legally described as follows:

Lot 5, except the East 13 feet thereof, Block 8, Valley Acres

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

November \_\_\_\_, 2004

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Robert J. Kressel  
United States Bankruptcy Judge