

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-61049-DDO

Chapter 7

Rhonda L. and Matthew R. Swanson

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

Debtor(s).

TO: Debtor(s) and Attorney for Debtor(s); Chapter 7 Trustee; U.S. Trustee; and other parties in interest.

TCF Mortgage Corporation (“Movant”) a secured creditor of Debtor(s), by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.

1. The Court will hold a hearing on this motion at 10:30 a.m. on October 26, 2004, before the Honorable Dennis D. O’Brien in Courtroom No. 2, United States Courthouse, 118 South Mill Street, Fergus Falls, Minnesota 56308 or as soon thereafter as counsel can be heard.

2. Any objection to the relief requested herein must be filed and delivered not later than October 21, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than October 15, 2004, which is seven (7) days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A WRITTEN RESPONSE IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

3. This motion is filed pursuant to Rule 4001 of the Federal Rules of Bankruptcy Procedure and Movant seeks relief from the automatic stay of 11 U.S.C. §§ 362 with respect to certain real property owned by Debtor(s).

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed.R.Bankr.P. 5005, 11 U.S.C. §362(d), Local Rule 1070-1 and applicable rules. This is a core proceeding. The petition commencing this Chapter 7 case was filed on September 2, 2004, and the case is now pending in this Court

5. By mortgage dated July 1, 2003, in the original principal amount of \$109,721.00 (“Mortgage”), Movant holds a mortgagee’s interest in the following real property (the “Property”):

Lot 30, Block 1, Westwood Village Townhomes, according to the Plat and survey thereof on file and of recorded in the Office of the County Recorder in and for Stearns County, Minnesota.

Property Address: 939 Cypress Road, Unit 30, St. Cloud, Minnesota 56303

The Mortgage was filed in the offices of such County. A copy of the Mortgage is attached hereto as Exhibit A.

6. Presently, there is a delinquency under the terms of the note secured by the Mortgage with respect to monthly payments due for the months of May 2004, through August 2004, in a total amount exceeding \$3,295.25 plus late fees, plus attorneys’ fees and costs. The outstanding balance due Movant under the terms of the note is \$112,344.38 plus interest, late fees, attorneys’ fees and costs.

7. The failure of Debtor(s) to make payments to Movant when due, or otherwise provide Movant with adequate protection of its interest in the Property constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1), entitling Movant to relief from the automatic stay. In addition, Movant requests that the stay imposed by Rule 4001(a) (3) of the Federal Rules of Bankruptcy Procedure be held not applicable so that Movant may immediately enforce and implement this Order granting relief from the automatic stay.

8. If testimony is necessary as to any facts relevant to this motion Janice McCall will testify on behalf of Movant.

9. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Movant respectfully moves the Court for an order modifying the automatic stay of 11 U.S.C. §§ 362 so as to permit Movant to foreclose the Mortgage on the Property and for such other relief as may be just and equitable.

Dated: September 23, 2004

MACKALL, CROUNSE & MOORE, PLC

By/e/Andrew P. Moratzka

Andrew P. Moratzka

Attorney No. 0322131

Attorneys for Movant

1400 AT&T Tower

Minneapolis, MN 55402

Ph. (612) 305-1400

UNIVERSAL TITLE COMPANY
hereby certifies that this copy is a
true and correct copy of the original.
By: Matthew Swanson
Title: _____
Date: _____

[Space Below This Line For Recording Data]

After Recording Return To:
BANKVISTA

PO BOX 338
SARTELL, MN 56377-0338

MORTGAGE

SWANSON
LOAN #: 1401463
CASE #: 271-8952892 -

This Mortgage ("Security Instrument") is given on JULY 1, 2003 . The Mortgagor is
MATTHEW R SWANSON AND RHONDA L SWANSON, HUSBAND AND WIFE

whose address is 8902 170TH AVE, OAK PARK, MN 56357
("Borrower"). This Security Instrument is given to BANKVISTA

which is organized and existing under the laws of MINNESOTA , and
whose address is PO BOX 338 125 TWIN RIVERS CT SARTELL, MN 56377

("Lender"). Borrower owes Lender the principal sum of
ONE HUNDRED NINE THOUSAND SEVEN HUNDRED TWENTY-ONE AND 00/100
Dollars (U.S. \$ 109,721.00). This debt is evidenced by Borrower's note dated the same date as
this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due
and payable on JULY 1, 2033 . This Security Instrument secures to Lender: (a) the
repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the
Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this
Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security
Instrument and the Note. For this purpose, Borrower does hereby mortgage, warrant, grant and convey to the
Lender, with power of sale the following described property located in STEARNS
County, Minnesota:

THE LAND REFERRED TO IS SITUATED IN THE STATE OF MINNESOTA, COUNTY OF
STEARNS, AND IS DESCRIBED AS FOLLOWS:

LOT 30, BLOCK 1, WESTWOOD VILLAGE TOWNHOMES, ACCORDING TO THE PLAT AND
SURVEY THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE COUNTY RECORDER
IN AND FOR STEARNS COUNTY, MINNESOTA.



which has the address of 939 CYPRESS ROAD UNIT 30
[Street]

ST CLOUD
[City]

Minnesota 56303
[Zip Code]

("Property Address");

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

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

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

Borrower and Lender covenant agree as follows:

UNIFORM COVENANTS.

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. **Monthly Payment of Taxes, Insurance, and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the deficiency as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. **Application of Payments.** All payments under Paragraphs 1 and 2 shall be applied by Lender as follows: FIRST, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

SECOND, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

THIRD, to interest due under the Note;

FOURTH, to amortization of the principal of the Note; and

FIFTH, to late charges due under the Note.

4. Fire, Flood and Other Hazard Insurance. Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall be include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in Paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in Paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in Paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in Paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by Paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may

significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in Paragraph 2.

Any amounts disbursed by Lender under this Paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender, shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. **Fees.** Lender may collect fees and charges authorized by the Secretary.

9. **Grounds for Acceleration of Debt.**

(a) **Default.** Lender may, except as limited by regulations issued by the Secretary in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or
- (ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) **Sale Without Credit Approval.** Lender shall, if permitted by applicable law (including section 341(d) of the Garn-St Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and
- (ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property, but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) **No Waiver.** If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) **Regulations of HUD Secretary.** In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) **Mortgage Not Insured.** Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. **Reinstatement.** Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of

Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorney's fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that is secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

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

12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of Paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the term of this Security Instrument or the Note without that Borrower's consent.

13. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. Governing Law; Severability. This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. Borrower's Copy. Borrower shall be given one conformed copy of the Note and of this Security Instrument.

16. 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 Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "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 the paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

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

17. Assignment of Rents. Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this Paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

18. Foreclosure Procedure. If Lender requires immediate payment in full under paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give notice of sale to Borrower in the manner provided in Paragraph 13. Lender shall publish and post the notice of sale, and the Property shall be sold in the manner prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorney's fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. Release. Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

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

21. Interest on Advances. The interest rate on advances made by Lender under paragraph 6 shall not exceed the maximum rate allowed by applicable law.

Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were in a part of this Security Instrument.

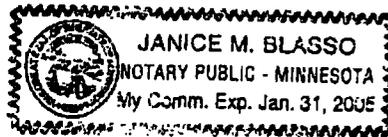
[Check applicable box(es)].

- | | | |
|--|--|---|
| <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Graduated Payment Rider | <input type="checkbox"/> Growing Equity Rider |
| <input checked="" type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Other [specify] | |
| <input type="checkbox"/> Adjustable Rate Rider | | |

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Matthew R Swanson 7-1-03
- BORROWER - MATTHEW R SWANSON - DATE -

Rhonda L Swanson 7-1-03
- BORROWER - RHONDA L SWANSON - DATE -



(Space Below This Line For Acknowledgment)

State of **MINNESOTA**
County of **STEARNS**

This instrument was acknowledged before me on **JULY 1, 2003**, by
MATTHEW R SWANSON AND RHONDA L SWANSON, HUSBAND AND WIFE

This instrument was drafted (or prepared) by:
KAREN JANSSEN
BANKVISTA

PO BOX 338 125 TWIN RIVERS CT
SARTELL, MN 56377

DOCU2MN7
DOCU2MN7.VTX 1/8/2003

(Signature of person taking acknowledgment)

(Title or Rank) Notary

My Commission Expires: **JANUARY 31, 2005**

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Matthew and Rhonda Swanson
TCF #811059120

Bky. No. 04-61049

Chapter 7

Debtor(s).

UNSWORN DECLARATION

I, Janice McCall, of TCF Mortgage Corporation declare under penalty of perjury that the facts contained herein are true and correct to the best of my knowledge, information and belief:

1. I am an employee of TCF Mortgage Corporation and have personal knowledge of the facts set forth herein.

2. Attached hereto is a true and correct copy of the mortgage made by Debtor(s) (the "Mortgage").

3. TCF Mortgage Corporation is the present holder of the Mortgage.

4. May 2004 through August 2004 are the months that remain unpaid pursuant to the note secured by the Mortgage (the "Note").

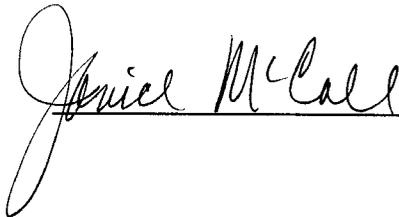
5. \$3,295.25 is the outstanding delinquency under the Note.

6. \$112,344.38 is the outstanding balance due under the Note.

7. \$120,380.00 is the approximate fair market value of the property described in the Mortgage.

8. Other defaults exist as follows: \$1,000.30 F/C Atty Fees

Dated: August 16, 2004



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-61049-DDO

Chapter 7

Rhonda L. and Matthew R. Swanson,

Debtor(s).

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

TCF Mortgage Corporation (“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 real property owned by Debtor(s).

Presently, there is a delinquency under the terms of the note secured by the Mortgage with respect to monthly payments due for the months of May 2004, through August 2004, in a total amount exceeding \$3,295.25 plus late fees, plus attorneys’ fees and costs. The outstanding balance due Movant under the terms of the note is \$112,344.38 plus interest, late fees, attorneys’ fees and costs.

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). The Bankruptcy Code states that adequate protection may be provided by requiring cash payments from the trustee to the entity seeking relief, by providing the entity seeking relief a replacement lien, or granting the entity seeking relief the indubitable equivalent of their interest. 11 U.S.C. § 361. Here, Debtor(s) failed to make the payments required by

the note and mortgage for the months of May 2004, through August 2004. Because the validity of the mortgage has not been challenged, the default by the debtor has not been disputed, and the trustee has not opposed lifting the automatic stay, the default alone entitles Movant to relief from the automatic stay. *See In re Elicker*, 100 B.R. 180, 183 (Bkrtcy.M.D.Pa. 1989). Furthermore, there has been no attempt by Debtor(s) to otherwise provide Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362(d)(1), justifying relief from the stay.

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property. In addition, Movant requests that the stay imposed by Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure be held not applicable so that Client may immediately enforce and implement this Order granting relief from the automatic stay.

Dated: July 12, 2004

MACKALL, CROUNSE & MOORE, PLC

By/e/Andrew P. Moratzka
Andrew P. Moratzka
Attorney No. 0322131
Attorneys for Movant
1400 AT&T Tower
Minneapolis, MN 55402
Ph. (612) 305-1400

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Rhonda L. and Matthew R. Swanson

Debtor(s)

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-61049-DDO

Amy J. Ditty, employed by Mackall, Crouse & Moore, with office address of 1400 AT&T Tower, 901 Marquette Avenue, Minneapolis, MN 55402-2859, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion and proposed Order** upon each of the entities named below by mailing to each of 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:

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

(Trustee)
Terri A. Georgen-Running
P O Box 16355
St. Paul, MN 55116

(Debtor(s))
Mathew R. Swanson
317 Fraser Drive
Foley, MN 56329

(Attorney for Debtor(s))
Daniel S. Rethmeier
P O Box 754
St. Cloud, MN 56302

Rhonda L. Swanson
1002 East Baker Street 25
St. Joseph, MN 56374

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

Dated: September 23, 2004

Signed: /e/Amy J. Ditty

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-61049-DDO
Chapter 7

Rhonda L. and Matthew R. Swanson,

Debtor(s).

**ORDER GRANTING
MOTION FOR RELIEF FROM STAY**

The above-entitled matter came before the Court for hearing on October 26, 2004, at the motion of TCF Mortgage Corporation (“Movant”) seeking relief from the automatic stay of 11 U.S.C. §§ 362 of the Bankruptcy Code. 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 Movant to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. § 362 of the Bankruptcy Code is immediately terminated and TCF Mortgage Corporation and/or its assignees and/or successors in interest, is hereby authorized to foreclose its mortgage on the following property:

Lot 30, Block 1, Westwood Village Townhomes, according to the Plat and survey thereof on file and of recorded in the Office of the County Recorder in and for Stearns County, Minnesota.

Property Address: 939 Cypress Road, Unit 30, St. Cloud, Minnesota 56303

Notwithstanding the Federal Rule of Bankruptcy Procedure 4001(a) (3) this order is effective immediately.

Dated: _____

Dennis D. O’Brien
United States Bankruptcy Judge