

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Kristi K. Adamson
SSN XXX-XX-8592

CHAPTER 13 CASE

CASE NO. 03-33156 GFK

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. U.S. Bank, N.A. (hereinafter "Secured Creditor"), 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 on October 13, 2004, at 9:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Dennis D. O'Brien in Courtroom 228A of the above entitled Court located at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 8, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than October 4, 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 Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on May 1, 2003. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1.

Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$130,320.00, as evidenced by that certain mortgage deed dated May 14, 2002, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated May 14, 2002, executed by Kristi K. Adamson, a single person, recorded on May 28, 2002, as Document No. 3502930, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is located in Ramsey County, Minnesota and is legally described as follows to-wit:

Lot 4, Nixon Addition, Ramsey County, Minnesota.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of September 23, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of June, 2004 through September, 2004, inclusive, in the amount of \$1,018.07 each; accruing late charges and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Debtor has no equity in the property and the property is not necessary to an effective reorganization. The value of the property as scheduled by Debtor is \$169,000.00 subject to Secured Creditor's mortgage in excess of \$131,646.99.

The property is also subject to a second mortgage in favor of Interbank in excess of \$24,000.00.

Considering selling costs of 10%, Debtor has no real equity in the property. The burden is on Debtor

to establish that this property is necessary to an effective reorganization.

11. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

12. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 23rd day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

0900
20
08
08

DOC# 3502930

Certified Recorded On
MAY 20, 2002 AT 10:00AM

Signed: DW
OFFICE CO. RECORDER
ROUSEY COUNTY MN

Fee Amount: \$28.00



LOAN NO.: 7810220249

(Space Above This Line For Recording Data)

MORTGAGE

7542 004 24 05/23/02 11:30
MTC T4: 200.74

7542 004 14 05/23/02 11:34
C.STAMPS 5.00

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 **MAY 14, 2002** together with all Riders to this document.

(B) "Borrower" is **KRISTI K. ADAMSON, A SINGLE PERSON**

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is **FIRST RESIDENTIAL MORTGAGE CORPORATION**

Lender is a **A CORPORATION** organized and existing under the laws of **THE STATE OF MINNESOTA**. Lender's address is **511 EAST TRAVELERS TRAIL, BURNSVILLE, MN 55337**.

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated **MAY 14, 2002**.

The Note states that Borrower owes Lender **ONE HUNDRED THIRTY THOUSAND THREE HUNDRED TWENTY AND 00/100**

Dollars (U.S. \$ **130,320.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **JUNE 1, 2032**.

(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.

**RETURN TO:
Burnet Title**

MINNESOTA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Form 3024 1/01
Lender Form No. 1802 448-2888
UP 1/01 1/01 (4)

106-13

EXHIBIT A 06

(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 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"/> Biweekly Payment Rider	<input type="checkbox"/> V.A. Rider	
<input type="checkbox"/> Other(s) [specify]		

(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. §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 RAMSEY (Type of Recording Jurisdiction) (Name of Recording Jurisdiction)

LOT 4, NIXON ADDITION, RAMSEY COUNTY, MINNESOTA

which currently has the address of

934 BAYARD AVENUE
(Street)

SAINT PAUL
(City)

, Minnesota

55102
(Zip Code)

("Property Address"):

TOGETHER WITH all the improvements now or hereafter created 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.

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.

Witnesses:

[Signature] (Seal)
KRISTI K. ADAMSON - Borrower

(Seal)
- Borrower

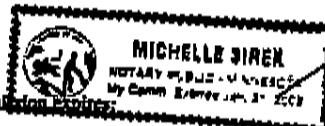
(Seal)
- Borrower

(Seal)
- Borrower

STATE OF MINNESOTA, Ramsey County in

On this 14th day of May, 2002, before me appeared KRISTI K. ADAMSON, A SINGLE PERSON

to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that he/she/they executed the same as his/her/their free act and deed.



[Signature] - Notary Public

This instrument was prepared by: First Residential Mortgage Corporation
511 East Travelers Trail
Burnsville, MN 55337

Tax statement sent to:

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Kristi K. Adamson
SSN XXX-XX-8592

Debtor.

CHAPTER 13 CASE

CASE NO. 03-33156 GFK

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

ARGUMENT

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of September 23, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of June, 2004 through September, 2004, in the amount of \$1,018.07 each; accruing late charges and attorneys fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to relief from the automatic stay. See In re Taylor, 151 B.R. 646 (E.D.N.Y., 1993) and In re Davis, 64 B.R. 358 (Bkrctcy. S.D.N.Y., 1986).

II. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. § 362(d)(2) WHERE (1) DEBTOR DOES NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE

PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under § 362(d)(2) is met where the total of all the encumbrances against the property is in excess of the value of the property. The value of the property as scheduled by Debtor is \$169,000.00 subject to Secured Creditor's mortgage in excess of \$131,646.99.

The property is also subject to a second mortgage in favor of Interbank in excess of \$24,000.00.

Considering selling costs of 10%, Debtor has no real equity in the property. The burden is on Debtor to establish that this property is necessary to an effective reorganization.

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected. Secured Creditor is also entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) where Debtor has no equity in the property, and where the property is not necessary to an effective reorganization.

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 23rd day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

CHAPTER 13 CASE

Kristi K. Adamson
SSN XXX-XX-8592

CASE NO. 03-33156

AFFIDAVIT OF
LISA ROGERS

Debtor.

Lisa Rogers, being first duly sworn on oath, deposes and states:

1. That she is the Bankruptcy Manager of National Default Servicing Corporation.

2. U.S. Bank, N.A., is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated May 14, 2004, executed by Kristi K. Adamson, a single person, recorded May 28, 2002, as Document No. 3502930. The property is located in Ramsey County, Minnesota and is legally described as follows, to-wit:

Lot 4, Nixon Addition, Ramsey County, Minnesota.

3. That she has reviewed the account records relating to the Adamson mortgage loan, account no. 7810220249.

4. That as of September 13, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$127,507.17
Interest through September 13, 2004	3,220.29
Attorney's Fees:	700.00
Late Charges:	126.78
Other Fees:	66.50
Title Search:	26.25
TOTAL:	\$131,646.99

5. That the mortgage loan is delinquent for monthly mortgage payments for the months of June, 2004 through September, 2004 in the amount of \$1,018.07 each.

6. This affidavit is given in support of the motion of U.S. Bank, N.A. for relief from the automatic stay.

NATIONAL DEFAULT SERVICING CORPORATION

By *Lisa Rogers*
its Bankruptcy Manager

Subscribed and sworn to before me
this 15th day of Sept, 2004.

Eleanor L. Zuccaro
Notary Public
9733_1



Notary Public State of Arizona
Maricopa County
Eleanor L. Zuccaro
Expires June 15, 2007

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Kristi K. Adamson
SSN XXX-XX-8592

Debtor.

CHAPTER 13 CASE

CASE NO. 03-33156 GFK

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on September 23, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Lisa Rogers, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Kristi K. Adamson
934 Bayard Ave
St. Paul, MN 55102

Jasmine Z. Keller
12 S 6th St Ste 310
Minneapolis, MN 55402

Ian Traquair Ball
12 S 6th St Ste 326
Minneapolis, MN 55402

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

Interbank
6545 France Ave S
Edina, MN 55435

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

Dated this 23rd day of September, 2004.

/e/ Diana Waletzko
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Kristi K. Adamson
SSN XXX-XX-8592

Debtor.

CHAPTER 13 CASE

CASE NO. 03-33156 GFK

ORDER

The above entitled matter came on for hearing upon motion of U.S. Bank, N.A. (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on October 13, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota. Appearances were as noted in the record. The Chapter 13 Trustee filed her Report of Standing Trustee in response to this motion. 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 Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated May 14, 2002, executed by Kristi K. Adamson, a single person, recorded on May 28, 2002, as Document No. 3502930 covering real estate located in Ramsey County, Minnesota, legally described as follows, to-wit:

Lot 4, Nixon Addition, Ramsey County, Minnesota

and may pursue its remedies under state law in connection with the subject note and mortgage deed. Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: _____

Judge of Bankruptcy Court