

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Craig Michael Brezinka
SSN XXX-XX-4104

CHAPTER 13 CASE

CASE NO. 04-33168 GFK

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

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

1. Aurora Loan Services, Inc. (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 September 27, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Gregory F. Kishel in Courtroom 228B 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 September 22, 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 September 16, 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 26, 2004. 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 \$162,000.00, as evidenced by that certain Promissory Note dated March 28, 2003, 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 March 28, 2003, executed by Craig M. Brezinka, a single person and Catherine L. Weimer, a single person, recorded on April 30, 2003, as Document No. 3616730, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B". The property is located in Ramsey County, Minnesota and is legally described as follows to-wit:

Lot 20, Block 12, Ridgewood Park Addition to the City of St. Paul, 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 7, 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 \$1,479.44 each; accruing 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 \$88,500.00 subject to Secured Creditor's mortgage in excess of \$168,696.92.

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.

13. Catherine L. Weimer is a co-debtor pursuant to 11 U.S.C. § 1301. Secured Creditor moves the Court for an Order for judgment that the automatic stay be lifted with respect to her interests.

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 7th day of September, 2004.

WILFORD & GESKE

By /e/ Joanna Cheyka
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 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.

15214711

Loan No: 81011047

NOTE
(MULTISTATE FIXED RATE)

MIN: 1001975-0000020505-4

March 28, 2003
(Date)

HIGHLAND PARK
(City)
1089 PLEASANT AVENUE
ST PAUL, MN 55102
(Property Address)

Minnesota
(State)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 162,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is BRIER MORTGAGE CORPORATION, a CORPORATION

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 8.750 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on May 1, 2003. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on April 1, 2033, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 3201 WEST COUNTY ROAD 42 #102
BURNSVILLE, MN 55306

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 1,274.45

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a)

MULTISTATE FIXED RATE NOTE - Single Family - FNMA/FHLMC Uniform Instrument
Form 3200 1/01

Lender Forms Inc. (800) 448-3555
LFI#FNMA3200 1/01

Initials: CW

EXHIBIT A

15:19:15 11/1

DOC# 3616730

Certified Recorded On
APR. 30, 2003 AT 03:00PM

RAMSEY COUNTY

Receipt No: 27335 Date: 4/9/2003
Registration tax hereon of \$388.80 Paid
MN Conservation Fund M.S. 473H \$5.00 Paid
Dorothy A. McClung, Auditor by Cpsadler

OFFICE CO. RECORDER
RAMSEY COUNTY MN

Fee Amount: \$28.00



BRIER MORTGAGE CORPORATION
3201 WEST COUNTY ROAD 42 #102
BURNSVILLE, MN 55306

Loan No: 81011047

(Space Above This Line For Recording Date)

MORTGAGE

MIN: 1001975-0000020505-4

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 **March 28, 2003** together with all Riders to this document.

(B) "Borrower" is **CRAIG M. BREZINKA, A SINGLE PERSON AND CATHERINE L. WEIMER, A SINGLE PERSON**

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P. O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is **BRIER MORTGAGE CORPORATION**

Lender is a **CORPORATION** organized and existing under the laws of **MINNESOTA**
Lender's address is **3201 WEST COUNTY ROAD 42 #102**
BURNSVILLE, MN 55306

(E) "Note" means the promissory note signed by Borrower and dated **March 28, 2008**
The Note states that Borrower owes Lender **One Hundred Sixty Two Thousand DOLLARS and Zero CENTS**

— Dollars (U.S. \$ **162,000.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **April 1, 2033**

MINNESOTA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Form 3024 1/01

Laser Forms Inc (800) 448-3555
LFI#FNMA3024-MERS 1/01 (A)

Page 1 of 13

Initials: **CW**

THE FIRST
SUBJECT TITLE

3-20114

EXHIBIT

B

1-13

16

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

(G) "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.

(H) "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]		

(I) "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.

(J) "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.

(K) "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.

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

(M) "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.

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

(O) "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.

(P) "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.

(Q) "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 MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, with power of sale, the following described property located in the

COUNTY of **Ramsey**
(Type of Recording Jurisdiction) (Name of Recording Jurisdiction)

LOT 20, BLOCK 12, RIDGEWOOD PARK ADDITION TO THE CITY OF ST. PAUL, RAMSEY COUNTY, MINNESOTA.

which currently has the address of

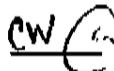
1089 PLEASANT AVENUE
(Street)

ST PAUL, Minnesota **55102** ("Property Address")
(City) (Zip Code)

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 understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

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:

Craig M. Brezinka
CRAIG M. BREZINKA (Seal)
-Borrower

Catherine L. Weimer
CATHERINE L. WEIMER (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Space Below This Line For Acknowledgment]

STATE OF MINNESOTA, Ramsey County ss:

On this 28th day of March, 2003, before me appeared
CRAIG M. BREZINKA, A SINGLE PERSON AND CATHERINE L. WEIMER, A SINGLE PERSON

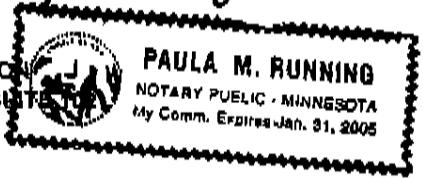
to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that he/she/they executed the same as his/her/their free act and deed.

Paula M. Running

- Notary Public

My Commission expires: 1/31/2005

This instrument was prepared by: BRIER MORTGAGE CORPORATION
3201 WEST COUNTY ROAD 42, SUITE 100
BURNSVILLE, MN 55306



Tax statement sent to:

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Craig Michael Brezinka
SSN XXX-XX-4104

CHAPTER 13 CASE

CASE NO. 04-33168 GFK

Debtor.

**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 7, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of June, 2004 through September, 2004, in the amount of \$1,479.44 each; accruing 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 (Bkrtcy. 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 \$88,500.00 subject to Secured Creditor's mortgage in excess of \$168,696.92.

The burden is on Debtor to establish that this property is necessary to an effective reorganization.

III. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 1301(c) WHERE THE INTEREST OF THIS SECURED CREDITOR WOULD BE IRREPARABLY HARMED BY CONTINUATION OF SUCH STAY.

Catherine L. Weimer is a co-debtor pursuant to 11 U.S.C. § 1301 and the non-debtor party in these proceedings and has received the consideration for the claim held by Secured Creditor. Neither the debtor nor Ms. Weimer provided for the payments referenced herein.

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 7th day of September, 2004.

WILFORD & GESKE

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

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Craig Michael Brezinka
SSN XXX-XX-4104

CASE NO. 04-33168 GFK

**AFFIDAVIT OF
MECHELLE ALLBAUGH**

Debtor.

Mechelle Allbaugh, being first duly sworn on oath, deposes and states:

1. That she is the Bankruptcy Specialist of Aurora Loan Services, Inc.

2. Aurora Loan Services, Inc., 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 March 28, 2003, executed by Craig M. Brezinka, a single person and Catherine L. Weimer, a single person, recorded April 30, 2003, as Document No. 3616730. The property is located in Ramsey County, Minnesota and is legally described as follows, to-wit:

Lot 20, Block 12, Ridgewood Park Addition to the City of St. Paul, Ramsey County, Minnesota.

3. That she has reviewed the account records relating to the Brezinka and Weimer mortgage loan, account no. 0015214711.

4. That as of August 31, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$160,936.60
Interest through August 31, 2004	7,060.32
Attorney's Fees:	700.00
TOTAL:	\$168,696.92

5. That the mortgage loan is delinquent for monthly post-petition mortgage payments for the months of June, 2004 through August, 2004 in the amount of \$1,479.44 each.

6. This affidavit is given in support of the motion of Aurora Loan Services, Inc. for relief from the automatic stay.

AURORA LOAN SERVICES, INC.

By Mechelle Allbaugh
Its Bankruptcy Specialist

Subscribed and sworn to before me
this 31 day of August, 2004.

Brenda Fulk
Notary Public



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Craig Michael Brezinka
SSN XXX-XX-4104

Debtor.

CHAPTER 13 CASE

CASE NO. 04-33168 GFK

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Joanna Cheyka, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Ste 300, Woodbury, Minnesota, declares that on September 7, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Mechelle Allbaugh, 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:

Craig M. Brezinka
1089 Pleasant Ave
St. Paul, MN 55102

Catherine L. Weimer
1089 Pleasant Ave
St. Paul, MN 55102

Curtis K. Walker
4356 Nicollet Ave S
Minneapolis, MN 55409

DaimlerChrysler Services North America,LLC
c/o Riezman Berger, PC
7700 Bonhomme, 7th Floor
St. Louis, MO 63105

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

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

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

Dated this 7th day of September, 2004.

/e/ Joanna Cheyka
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Craig Michael Brezinka
SSN XXX-XX-4104

Debtor.

CHAPTER 13 CASE

CASE NO. 04-33168 GFK

ORDER

The above entitled matter came on for hearing upon motion of Aurora Loan Services, Inc. (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on September 27, 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 and § 1301 with regard to that certain mortgage deed dated March 28, 2003, executed by Craig M. Brezinka, a single person and Catherine L. Weimer, a single person, recorded on April 30, 2003, as Document No. 3616730 covering real estate located in Ramsey County, Minnesota, legally described as follows, to-wit:

Lot 20, Block 12, Ridgewood Park Addition to the City of St. Paul, 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