

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Bky. No. 03-42697 (RJK)
Gretchen Marie Morical, Chapter 13 Case
Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

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

1. Minnesota Housing Finance Agency (“Movant”) hereby gives notice that a hearing on its Motion for Relief from Stay will be held at 2:00 p.m. on October 28, 2004 in Courtroom No. 8 West, at the U.S. Bankruptcy Court, U.S. Courthouse, at 300 South Fourth Street, Minneapolis, Minnesota, or as soon thereafter as counsel can be heard.

2. Any response to this motion must be filed and delivered not later than October 25, 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 19, 2004, which is seven (7) days before the time set for hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

3. Movant brings this motion pursuant to 11 U.S.C. §§ 362 and 1301 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9001-1 to 9019-1. This proceeding involves certain real property of Debtor which is subject to a mortgage lien held by Movant

(the "Property"). The Property is located in Hennepin County, Minnesota, and is more fully described as:

Unit No. 64, Condominium No. 611, South Pond Carriage Homes, a Condominium, Hennepin County, Minnesota.

Movant requests relief from the automatic stay to foreclose its mortgage lien on the Property.

4. The Court has authority to hear and finally determine this motion pursuant to 28 U.S.C. §§ 1334 and 157, 11 U.S.C. § 362(d), and Bankruptcy Rule 5005 and Local Rule 1070-1. The determination of this motion constitutes a core proceeding pursuant to 11 U.S.C. § 157(b)(2)(G). The petition commencing this Chapter 13 case was filed on April 14, 2003. Debtor's case is now pending in the Court.

5. On or about September 29, 1998, Gretchen Marie Morical executed a certain Mortgage Note and Mortgage Deed covering the Property in favor of Firststar Home Mortgage Corporation ("Firststar"). Copies of the Mortgage Note and Mortgage Deed, together with evidence of recording, are attached as Exhibits A and B.

6. Firststar assigned the Mortgage Note and Mortgage Deed covering the Property to Movant.

7. Pursuant to the confirmed Plan, Debtor agreed to maintain timely post-petition payments on the mortgage loan with Movant. Debtor is currently in default on three post-petition mortgage payments for July through the September 2004 payment. The post-petition default, including motion costs and late charges, totals \$2,479.87. This default will increase to \$3,054.70 on October 1, 2004, when another mortgage payment becomes due.

8. The total indebtedness to Movant, as of September 20, 2004 is \$74,330.27 including accrued interest and motion costs. Interest continues to accrue on the indebtedness at a per diem rate of \$11.93.

9. Debtor scheduled a second mortgage on the Property to MERS with an unpaid balance of \$23,000.00. MERS obtained relief from stay on September 16, 2004 in this case to foreclose its mortgage.

10. 11 U.S.C. § 362(d)(1) authorizes the Court to grant a creditor relief from the automatic stay for “cause”, which includes the “lack of adequate protection of an interest in property of [the creditor]” or default by Debtor in payments required by the terms of the confirmed Plan. Debtor’s failure to maintain post-petition payments to Movant constitutes a default under Debtor’s Plan.

11. Movant requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

WHEREFORE, Movant, by its undersigned attorneys, requests relief from the automatic stay provided by 11 U.S.C. § 362(a) for itself and its successors and assignees to foreclose its mortgage lien on the Property, and for such other relief as may be just and equitable.

Dated: September 28, 2004

BEST & FLANAGAN LLP

By /e/ Patrick B. Hennessy
Patrick B. Hennessy
Atty. Registration No. 124412
Attorneys for Minnesota Housing Finance
Agency
225 South Sixth Street, Suite 4000
Minneapolis, MN 55402-4690
(612) 339-7121

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Bky. No. 03-42697 (RJK)

Gretchen Marie Morical,

Chapter 13 Case

Debtor.

**UNSWORN VERIFICATION AND
DECLARATION REGARDING ELECTRONIC FILING**

Liz Hacker declares under penalty of perjury under the laws of the United States that:

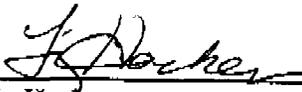
1. I am the Branch Manager for U.S. Bank Home Mortgage, servicing agent for Minnesota Housing Finance Agency for Minnesota Housing Finance Agency, ("Movant") and I have been duly authorized by it to verify Movant's Motion for Relief from Stay dated September 28, 2004, (the "Motion") to be filed in the above captioned bankruptcy case.

2. I have read the Motion, know its contents, and state that the same are true and correct to the best of my knowledge, information and belief.

3. I understand that our attorney will scan this Verification and save it in a PDF format to be inserted into the electronic submission of this motion.

4. I consent to the Motion being filed electronically by our attorney with the Clerk of the United States Bankruptcy Court, and that Movant's attorney, Best & Flanagan LLP, will retain the original in its file*.

Dated: September 29, 2004


Liz Hacker

* Best & Flanagan LLP will retain the original of this unsworn declaration in its file for 2 years.

Multistate

NOTE

FHA Case No.

271-794009-3-734

SEPTEMBER 29, 1998

[Date]

8431 SOUTH POND TRAIL, CHAMPLIN, MINNESOTA 55316
[Property Address]

1. PARTIES

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means

FIRSTAR HOME MORTGAGE CORPORATION
and its successors and assigns.

2. BORROWER'S PROMISE TO PAY; INTEREST

In return for a loan received from Lender, Borrower promises to pay the principal sum of

SEVENTY EIGHT THOUSAND ONE HUNDRED FIFTY AND NO/100

Dollars (U.S. \$ 78,150.00), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of SIX AND 50/1000 percent (6.050 %) per year until the full amount of principal has been paid.

3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." The Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

4. MANNER OF PAYMENT

(A) Time

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on NOVEMBER 1, 1998. Any principal and interest remaining on the first day of OCTOBER 2028, will be due on that date, which is called the "Maturity Date."

(B) Place

Payment shall be made at 809 SOUTH 60TH STREET, SUITE 210, WEST ALLIS, WI 53214

or at such place as Lender may designate in writing by notice to Borrower.

(C) Amount

Each monthly payment of principal and interest will be in the amount of U.S. \$ 471.07. This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

(D) Allonge to this Note for payment adjustments

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note. [Check applicable box]

Graduated Payment Allonge Growing Equity Allonge Other [specify]

5. BORROWER'S RIGHT TO PREPAY

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month. Lender shall accept prepayment on other days provided that Borrower pays interest on the amount prepaid for the remainder of the month to the extent required by Lender and permitted by regulations of the Secretary. If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of the monthly payment unless Lender agrees in writing to those changes.

FHA Multistate Fixed Rate Note - 10/95

1R (08/11)

1ST MORTGAGE FORMS - (08/05) 25M

Page 1 of 2

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EXHIBIT A

6. BORROWER'S FAILURE TO PAY

(A) Late Charge for Overdue Payments

If Lender has not received the full monthly payment required by the Security Instrument, as described in Paragraph 4(C) of this Note, by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of **FOUR AND NO/100** percent (**4.00** %) of the overdue amount of each payment.

(B) Default

If Borrower defaults by failing to pay in full any monthly payment, then Lender may, except as limited by regulations of the Secretary in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest. Lender may choose not to exercise this option without waiving its rights in the event of any subsequent default. In many circumstances regulations issued by the Secretary will limit Lender's rights to require immediate payment in full in the case of payment defaults. This Note does not authorize acceleration when not permitted by HUD regulations. As used in this Note, "Secretary" means the Secretary of Housing and Urban Development or his or her designee.

(C) Payment of Costs and Expenses

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorneys' fees for enforcing this Note to the extent not prohibited by applicable law. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

7. WAIVERS

Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice that must be given to Lender under this Note will be given by first class mail to Lender at the address stated in Paragraph 4(B) or at a different address if Borrower is given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. Lender may enforce its rights under this Note against each person individually or against all signatories together. Any one person signing this Note may be required to pay all of the amounts owed under this Note.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.

Gretchen Marie Morical (Seal)

GRETCHEN MARIE MORICAL

-Borrower

(Seal)

-Borrower

COPY

903

Registrar of Titles, Hennepin, MN

Date Filed: 10/16/1998 01:00 PM

As Doc #: 3071677.0

Copy

On CT #: 1011296.0

[Space Above This Line For Recording Data]

LOAN: 7850000323

State of Minnesota

74583868

MORTGAGE

FHA Case No.	271-794009-3-734
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COPY

THIS MORTGAGE ("Security Instrument") is given on SEPTEMBER 29, 1998
The Mortgagor is

GRETCHEN MARIE MORICAL (UNMARRIED)

Henn Co. MR1
UMBA 33132
10/10/98
Paid \$187.66
Duplicate

("Borrower"). This Security Instrument is given to

FIRSTAR HOME MORTGAGE CORPORATION

which is organized and existing under the laws of THE STATE OF WISCONSIN, and
whose address is 809 SOUTH 60TH STREET, SUITE 210, WEST ALLIS, WI 53214

("Lender"). Borrower owes Lender the principal sum of
SEVENTY EIGHT THOUSAND ONE HUNDRED FIFTY AND NO/100

Dollars (U.S. \$ 78,150.00).

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 OCTOBER 1, 2028

and for interest at the yearly rate of 6.050 percent. 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

FHA Minnesota Mortgage - 4/96

VMP-4R(MN) (9702)

Page 1 of 8

Initials: EM

VMP MORTGAGE FORMS - (800)521-7291



EXHIBIT B

under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to the Lender, with power of sale, the following described property located in HENNEPIN County, Minnesota:

UNIT NO. 64, CONDOMINIUM NO. 611, SOUTH POND CARRIAGE HOMES,
A CONDOMINIUM, HENNEPIN COUNTY, MINNESOTA.

which has the address of 8431 SOUTH POND TRAIL, CHAMPLIN [Street, City],
Minnesota 55316 [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 and 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 for unanticipated disbursements or disbursements before the 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 shortage 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 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 attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it 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 foreclosure proceedings within two years immediately preceding 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 terms 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 this 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 of all sums 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.

If Lender invokes the power of sale, Lender shall cause a copy of a notice of sale to be served upon any person 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 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 attorneys' 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.

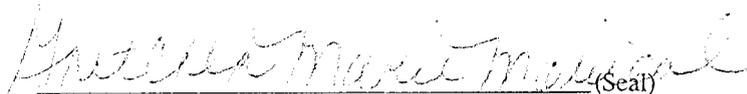
20. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

21. Interest on Advances. The interest rate on advances made by Lender under paragraph 7 shall not exceed the maximum rate allowed by applicable law.

22. 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 a part of this Security Instrument. [Check applicable box(es)].

- Condominium Rider
- Planned Unit Development Rider
- Growing Equity Rider
- Graduated Payment Rider
- Other [specify]
Minnesota Housing Finance
FHA First Mortgage Deed
Amendment (Tax-Exempt
Financing Rider)

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.
Witnesses:

	 (Seal) GRETCHEN MARIE MORICAL -Borrower
	_____ (Seal) -Borrower

STATE OF MINNESOTA,

Hennepin

County ss:

On this 29th day of September, 1998, before me appeared

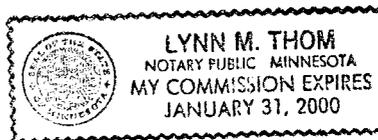
Gretchen Marie Morical, unmarried

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

My Commission Expires:
(Seal)



Notary Public



This instrument was prepared by
NICOLLE POBANZ-KORBA
FIRSTAR HOME MORTGAGE CORPORATION
1550 EAST 79TH STREET
BLOOMINGTON, MN 55425

RECORD & RETURN TO: FIRSTAR HOME MORTGAGE CORPORATION
1550 EAST 79TH STREET
BLOOMINGTON, MN 55425

Initials: 

LOAN: 7850000323

FHA Case No.
271-794009-3-734

CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this 29TH day of SEPTEMBER, 1998, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to

FIRSTSTAR HOME MORTGAGE CORPORATION

("Lender") of the same date and covering the Property described in the Security Instrument and located at:

8431 SOUTH POND TRAIL, CHAMPLIN, MINNESOTA 55316
[Property Address]

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:

SOUTH POND CARRIAGE HOMES
[Name of Condominium Project]

("Condominium Project"). If the owners association or other entity which acts for the Condominium Project ("Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest.

CONDOMINIUM COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

- A. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring all property subject to the condominium documents, including all improvements now existing or hereafter erected on the Property, and such policy is satisfactory to Lender and provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and other hazards included within the term "extended coverage," and loss by flood, to the extent required by the Secretary, then: (i) Lender waives the provision in Paragraph 2 of this Security Instrument for the monthly payment to Lender of one-twelfth of the yearly premium installments for hazard insurance on the Property, and (ii) Borrower's obligation under Paragraph 4 of this Security Instrument to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy. Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage and of any loss occurring from a hazard. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the condominium unit or to the common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to the entity legally entitled thereto.

FHA Multistate Condominium Rider - 10/95

VMP -586 (9601)

VMP MORTGAGE FORMS - (800)521-7291



B. Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments creating and governing the Condominium Project.

C. If Borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph C shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this Condominium Rider.

Gretchen Marie Morical (Seal) _____ (Seal)
GRETCHEN MARIE MORICAL -Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

MINNESOTA HOUSING FINANCE AGENCY
FHA FIRST MORTGAGE DEED AMENDMENT
(TAX-EXEMPT FINANCING RIDER)

711 583868

The rights and obligations of the parties to the attached Mortgage Deed, which is incorporated herein by this reference, and the Note which is secured by the Mortgage Deed are expressly made subject to this Rider. In the event of any conflict between the provisions of this Rider and the other provisions of the Mortgage Deed or Note, the provisions of the Rider shall control.

In addition to the covenants and agreements made in the Mortgage Deed, Borrower and Lender further covenant and agree to amend Paragraph 9 of the attached Mortgage Deed, entitled "Grounds for Acceleration of Debt," by adding additional grounds for acceleration as follows:

Lender, or such of its successors or assigns as may by separate instrument assume responsibility for assuring compliance by the Borrower with the provisions of this Tax-Exempt Financing Rider, may require immediate payment in full of all sums secured by the Mortgage Deed if:

(a) All or part of the Property is sold or otherwise transferred by Borrower to a purchaser or other transferee:

(i) Who cannot reasonably be expected to occupy the property as a principal residence within a reasonable time after the sale or transfer, all as provided in Section 143(c) and (i)(2) of the Internal Revenue Code; or

(ii) Who has had a present ownership interest in a principal residence during any part of the three-year period ending on the date of the sale or transfer, all as provided in Section 143(d) and (i)(2) of the Internal Revenue Code (except that "100 percent" shall be substituted for "95 percent or more" where the latter appears in Section 143(d)(1)); or

(iii) At an acquisition cost which is greater than 90 percent of the average area purchase price (greater than 110 percent for targeted area residences), all as provided in Section 143(e) and (i)(2) of the Internal Revenue Code; or

(iv) Who has a gross family income in excess of the applicable percentage of applicable median family income as provided in Section 143(f) and (i)(2) of the Internal Revenue Code; or

(b) Borrower fails to occupy the property described in the Mortgage Deed without prior written consent of Lender or its successors or assigns, or

(c) Borrower omits or misrepresents a fact that is material with respect to the provisions of Section 143 of the Internal Revenue Code in an application for the loan secured by the Mortgage Deed

References are to the Internal Revenue Code as amended and in effect on the date of issuance of bonds, the proceeds of which will be used to finance the purchase of the Mortgage Deed, and are deemed to include the implementing regulations.

IN WITNESS WHEREOF, the Mortgagor(s) has hereunto set his hand on the day and year first hereinbefore written.

Gretchen Marie Morical

Borrower Gretchen Marie Morical

Borrower

State of Minnesota

County of Hennepin

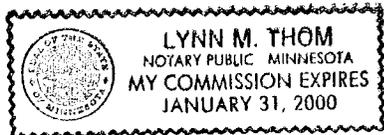
ss.

On this 29th day of September, 1998, before me personally appeared Gretchen Marie Morical, unmarried

known to me to be the person(s) whose name(s) (are) (is) subscribed to the within instrument, and acknowledged to me that (he) (she) (they) executed the same.

[Signature]

Notary Public



Registrar of Titles, Hennepin, MN

Date Filed: 10/16/1998 01:00 PM

As Doc #: 3071678.0

Copy

On CT #: 1011296.0.

Assignment of Real Estate Mortgage/Deed of Trust

PIN # 003112021130076
Pool # 9023500809
Loan # 7850000323

THIS INSTRUMENT WAS PREPARED BY AND RETURN TO:

NICOLLE POBANZ-KORBA
FIRSTSTAR HOME MORTGAGE CORPORATION
1550 EAST 79TH STREET
BLOOMINGTON, MN 55425

7453868

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to
MINNESOTA HOUSING FINANCE AGENCY
400 SIBLEY STREET
ST. PAUL, MN 55101

all the rights, title and interest of the undersigned in and to that certain Real Estate Mortgage/Deed of Trust
dated SEPTEMBER 29, 1998, executed by
GRETCHEN MARIE MORICAL (UNMARRIED)

COPY

to FIRSTSTAR HOME MORTGAGE CORPORATION
its Successors and/or Assigns a corporation organized under the laws of the
STATE OF WISCONSIN

and recorded on 10-16-98, as Document No. 3071677
page(s) , in Book/Volume No. Certificate No.
HENNEPIN County Records, State of MINNESOTA described hereinafter as follows:
REGISTRAR OF TITLE
UNIT NO. 64, CONDOMINIUM NO. 611, SOUTH POND CARRIAGE HOMES,
A CONDOMINIUM, HENNEPIN COUNTY, MINNESOTA.

Also filed on , as Doc. No. N/A , Book Pg. Cert. No.

Commonly Known As: 8431 SOUTH POND TRAIL, CHAMPLIN, MINNESOTA 55316
TOGETHER with the note or notes therein described or referred to, the money due and to become due thereon with interest, and
all rights accrued or to accrue under said Real Estate Mortgage/Deed of Trust

Pool # 9023500809
Loan # 7850000323

FIRSTAR HOME MORTGAGE CORPORATION

BY: Lea A Phillips
LEA A PHILLIPS
ITS: ASSISTANT VICE PRESIDENT

STATE OF MINNESOTA
COUNTY OF HENNEPIN

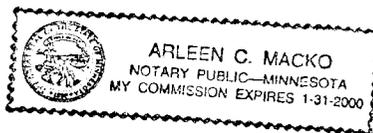
The foregoing instrument was executed and acknowledged before me this 29 day of

SEPTEMBER, 19 98, by LEA A PHILLIPS

the ASSISTANT VICE PRESIDENT of FIRSTAR HOME MORTGAGE CORPORATION

a Corporation under the laws of the STATE OF WISCONSIN, on behalf of the Corporation.

Notary Public Arleen C Macko



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Bky. No. 03-42697 (RJK)
Gretchen Marie Morical, Chapter 13 Case
Debtor.

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

STATEMENT OF FACTS

The facts are set forth in the motion and are only briefly summarized herein.

Debtor herein filed her bankruptcy petition on April 24, 1003. The Plan provided that Debtor would continue to make post-petition monthly payments to Movant as such payments came due. Debtor is in default on such postpetition payments.

ARGUMENT

Cause--Lack of Adequate Protection and Failure to Make Agreed Payments

1. 11 U.S.C. § 362(d)(1) authorizes the Court to grant a creditor relief from the automatic stay for “cause”, which includes the “lack of adequate protection of an interest in property of [the creditor]”. Movant is not adequately protected as contemplated by 11 U.S.C. § 361. Debtor’s failure to maintain regular periodic payments to Movant demonstrates an inability to provide adequate protection of Movant’s mortgage lien on the property.
2. Debtor’s default in payment of post-petition payments represents a material default in the terms of the Plan and, as such, provides an independent basis to grant Movant relief from stay. 11

U.S.C. § 1307(c), which defines “cause” in connection with grounds for dismissal of a Chapter 13 case, includes a material default by Debtor with respect to the terms of the Plan. Such a default also constitutes “cause” in the context of a secured creditor’s motion for relief from stay. See, In re Quinlan, 12 B.R. 516 (Bankr. W.D. Wisc. 1981). The Bankruptcy Court in Minnesota has found a default in post-petition mortgage payments to constitute “cause” within the meaning of 11 U.S.C. § 362(d)(1). In re Borchardt, 47 B.R. 879 (Bankr. D. Minn. 1985); First Federal Savings & Loan Association of Minneapolis v. Whitebread, 18 B.R. 192 (Bankr. D. Minn. 1982). See also, In re Skipworth, 69 B.R. 526 (Bankr. E.D. Pa. 1987); In re Frascatore, 33 B.R. 687 (Bankr. E.D. Pa. 1983); In re Family Inv., Inc., 8 B.R. 572 (Bankr. W.D. Ky. 1981).

Dated: September 28, 2004.

BEST & FLANAGAN LLP

By /e/ Patrick B. Hennessy

Patrick B. Hennessy
Attorney Registration No. 124412
Attorneys for Minnesota Housing Finance Agency
225 South Sixth Street, Suite 4000
Minneapolis, MN 55402-4690
(612) 339-7121

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 13

Gretchen Marie Morical

BKY Case 03-42697

Debtor.

**DECLARATION REGARDING ELECTRONIC FILING AND
UNSWORN CERTIFICATE OF SERVICE**

I, Kathryn J. Dahl, declare under penalty of perjury that on October 1, 2004, I mailed copies of the Notice of Hearing and Motion, Memorandum of Law, and proposed Order Modifying Automatic Stay of Minnesota Housing Finance Agency, which documents were electronically filed on October 1, 2004, by first class mail postage prepaid to each entity named below at the address stated below for each entity.

I will scan the original of this Declaration and save it in PDF format and understand it will be inserted into the electronic submission of the motion. I consent to this Declaration being electronically filed with the United States Bankruptcy Court. Best & Flanagan LLP will retain the original of this unsworn declaration in its file for 2 years.

Gretchen Marie Morical
8431 South Pond Trail
Champlin, MN 55316

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

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

Mortgage Electronic Registration Systems, Inc.
c/o Thomas J. Reiter
Reiter & Schiller
The St. Paul Building
Six West 5th Street, Seventh Floor
St. Paul, MN 55102-1420

Jasmine Z. Keller, Trustee
310 Plymouth Building
12 South Sixth Street
Minneapolis, MN 55402

Executed on: October 1, 2004

Signed: _____

Kathryn J. Dahl

Kathryn J. Dahl
Best & Flanagan LLP
225 South Sixth Street, Suite 4000
Minneapolis, MN 55402

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Bky. No. 03-42697 (RJK)
Gretchen Marie Morical, Chapter 13 Case
Debtor.

ORDER MODIFYING AUTOMATIC STAY

This matter came before the Court for hearing on October 28, 2004, on the motion of Minnesota Housing Finance Agency, for relief from the automatic stay to foreclose its mortgage lien on certain real property of the Debtors ("Property"). The Property is located in Hennepin County, Minnesota, and is more fully described as follows:

Unit No. 64, Condominium No. 611, South Pond Carriage Homes, a Condominium, Hennepin County, Minnesota.

Appearances of counsel were noted on the record. Counsel were heard. Based upon the verified Motion of movant, supporting Memorandum, the files and records herein, and arguments of counsel:

IT IS HEREBY ORDERED that the automatic stay provided by 11 U.S.C. § 362(a) and/or 1301 is modified to allow Minnesota Housing Finance Agency, its successors, and/or its assignees to foreclose its mortgage lien on the Property in accordance with the terms of its Mortgage Note and Mortgage Deed and the laws of the State of Minnesota. Notwithstanding Fed.R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated: _____, 2004

Robert J. Kressel
U.S. Bankruptcy Judge