

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 13 CASE**

Robert S. Tollefson  
SSN XXX-XX-0799  
Carole J. Tollefson  
SSN XXX-XX-1859

**CASE NO. 04-33703 DDO**

Debtor.

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

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

1. GMAC Mortgage Corporation (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 20, 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 15, 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 11, 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 June 23, 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 \$50,000.00, as evidenced by that certain mortgage deed dated October 24, 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 October 24, 2003, executed by Robert S. Tollefson and Carole J. Tollefson, husband and wife, recorded on January 13, 2004, as Document No. 3416068, 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 Washington County, Minnesota and is legally described as follows to-wit:

All that parcel of land in City of Woodbury, Washington County, State of Minnesota, as more fully described in Deed Doc #298506, ID # R1702821140004, being known and designated as metes and bounds property. Abstract Property. The South 172 feet of the East 253 feet of the Southeast Quarter of the Northeast Quarter of Section 17, Township 28, Range 21, according to the U.S. Government Survey thereof, subject to the easement of the public highway. By fee simple deed from Wallace T. Porath and Mildred W. Porath, husband and wife as set forth in Doc #298506 Dated 04/26/1972 and recorded 05/02/1972, Washington County Records, State of 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 October 4, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of July, 2004 through October, 2004, inclusive, in the amount of \$501.14 each; accruing late charges and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. 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.

11. 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 4th day of October, 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

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

**WASHINGTON COUNTY**

Receipt No: 163461 Date: 12/3/2003  
Registration tax hereon of \$115.00 PAID  
MN Conservation Fund M.S. 473h \$5.00 PAID  
Molly F. O'Rourke, Auditor by BAFrans

6804546

3416068



Office of the  
County Recorder  
Washington County, MN

Certified filed and/or recorded on:  
2004/01/13 2:46:00 P

3416068



#35

When recorded mail to:  
Home Connects  
100 Lakeside Drive, Horsham, PA 19044



Clady Koppelman  
County Recorder

*Clady Koppelman*

**MORTGAGE**

**THIS MORTGAGE SECURES OBLIGATORY FUTURE ADVANCES**

Loan No. 000654759394  
Loan Product: Equity Line

MIN 100037506547593948

THIS MORTGAGE as amended and extended (this "Mortgage") is signed to secure advances under a GMAC Mortgage Corporation DBA ditech.com Home Equity Line of Credit Agreement (the "Agreement") which matures 09/24/2028 and is made by this Mortgage is dated as of October 24, 2003

Robert S. Tollefson and Carole J. Tollefson, Husband and Wife

whose address is 2470 Tower Drive, Woodbury, MN 55125 as mortgagor(s), in favor of GMAC Mortgage Corporation DBA ditech.com 3200 Park Center Dr. Suite 150, Costa Mesa, CA 92626 as mortgagee. Borrower irrevocably mortgages, grants, and conveys to the Mortgage Electronic Registration Systems Inc. PO Box 2026 Flint, MI 48501-2026 (MERS) acting solely as a nominee for Lender and Lender's successors and assigns.

Throughout this Mortgage, "we", "us" and "our" refer to mortgagor(s). "LENDER" refers to GMAC Mortgage Corporation DBA ditech.com or its assigns. The "Account" refers to the Home Equity Line of Credit account established by LENDER under the Agreement. "Borrower" refers to each person who signs the Agreement as borrower. The Agreement and this Mortgage, taken together, are called the "Credit Documents." "Signer" refers to any person (other than LENDER) who has signed a Credit Document.

**DESCRIPTION OF SECURITY**

By signing this Mortgage, we mortgage to MERS as nominee LENDER, subject to the terms of this Mortgage, (a) the real estate located at 2470 Tower Drive, Woodbury, Washington County of Washington, State of Minnesota 55125- more fully described in Schedule A; (b) all buildings and other structures on the property; (c) all rights we may have in any road, alley, easement or license regarding the property or in any mineral, oil, gas or water which is part of the property; (d) all rents and royalties from the property; (e) to the extent permitted by law, all proceeds of any insurance on the property and all refunds of premiums on such insurance; (f) all proceeds of any taking (or threatened taking) of the property by any governmental authority ("condemnation"); and (g) all fixtures on the property at any time (collectively, the "Property").

The Property includes all rights and interests which we now have or which we may acquire in the future. For example, if the security mortgaged under this Mortgage is a leasehold estate and we subsequently acquire fee title to the Property, the rights and interests granted to MERS acting solely as a nominee for LENDER by this Mortgage will include the fee title that we acquire. This Mortgage is also a Security Agreement under the Minnesota Uniform Commercial Code and we hereby grant MERS acting solely as a nominee for LENDER a security interest in the personal property described in (d) through (g) above.

**SECURED OBLIGATIONS**

**THIS MORTGAGE SECURES OBLIGATORY FUTURE ADVANCES.**

We have signed this Mortgage to secure payment to LENDER of a maximum principal indebtedness of \$50,000.00, plus FINANCE CHARGES and any other amounts due LENDER under the Agreement (the "Total Balance Outstanding") and to secure performance by Borrower under the Agreement and our performance of the covenants of this Mortgage (collectively, the "Secured Obligations"). LENDER is aware of the provisions of Section 287.05, subd. 5, Minnesota Statutes, and intends to comply with the requirements contained therein.

**EXHIBIT** A

22. **TIME OF ESSENCE.** Time is of the essence in this Mortgage.

23. **ACTUAL KNOWLEDGE.** For purposes of the Credit Documents, LENDER shall not be deemed to have actual knowledge of any fact until it actually receives notice as set forth in paragraph 11 or until it receives written notice thereof from a source LENDER reasonably believes to be reliable. The date of receipt shall be determined by reference to the "Received" date stamped on such written notice by LENDER or its agent.

24. **RELEASE.** To the extent permitted by law, for ourselves and our successors and assigns, we hereby release all homestead rights and benefits and inchoate statutory rights and benefits arising out of marriage.

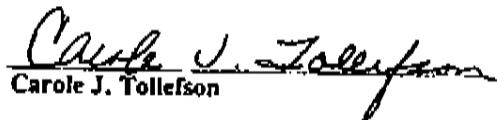
25. **EXPENSES OF LITIGATION.** In any proceeding to enforce any remedy of LENDER under the Credit Documents there shall be allowed and included, to the extent permitted by law, as additional indebtedness in the judgment or decree, any court costs and reasonable expenses which may be paid or incurred by LENDER for attorneys; appraisers; documentary and expert evidence; stenographers; publication; surveys; abstracts of title; title searches; title insurance policies; Torrens certificates; and similar items which LENDER reasonably considers necessary in such proceeding or to evidence to bidders at any sale the true condition of the title to or value of the Property. Such expenses may be estimated to the extent they will be incurred after entry of the decree. In any foreclosure by advertisement, all expenses permitted by statute that LENDER incurs in protecting the Property, maintaining the lien of this Mortgage and foreclosing this Mortgage shall be included in the redemption price.

26. **CAPTIONS; GENDER; ETC.** The headings in this Mortgage are not to be used to interpret or define its provisions. In this Mortgage, the masculine gender includes the feminine and/or neuter, singular numbers include the plurals, and plurals include the singular.

27. **MERS.** Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Mortgage, but, if necessary to comply with local law or custom MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of these 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 Mortgage.

By signing this Mortgage, we agree to all of the above.

  
Robert S. Tollefson

  
Carole J. Tollefson

\_\_\_\_\_  
\_\_\_\_\_

STATE OF MINNESOTA ) -  
COUNTY OF Washington

On the 24 day of October, 2003, before me personally came

Shirland

Customer Name: ROBERT TOLLEFSON

Page 5 of 5

Application #: 000654759394

Order #: 3781352

Exhibit A (Legal Description)

ALL THAT PARCEL OF LAND IN CITY OF WOODBURY, WASHINGTON COUNTY, STATE OF MINNESOTA, AS MORE FULLY DESCRIBED IN DEED DOC # 298506, ID# R1702821140004, BEING KNOWN AND DESIGNATED AS METES AND BOUNDS PROPERTY.

ABSTRACT PROPERTY.

THE SOUTH 172 FEET OF THE EAST 253 FEET OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 28, RANGE 21, ACCORDING TO THE U.S. GOVERNMENT SURVEY THEREOF, SUBJECT TO THE EASEMENT OF THE PUBLIC HIGHWAY.

BY FEE SIMPLE DEED FROM WALLACE T. PORATH AND MILDRED W. PORATH, HUSBAND AND WIFE AS SET FORTH IN DOC # 298506 DATED 04/26/1972 AND RECORDED 05/02/1972, WASHINGTON COUNTY RECORDS, STATE OF MINNESOTA.

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 13 CASE**

Robert S. Tollefson  
SSN XXX-XX-0799  
Carole J. Tollefson  
SSN XXX-XX-1859

**CASE NO. 04-33703 DDO**

Debtor.

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**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 October 4, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of July, 2004 through October, 2004, in the amount of \$501.14 each; accruing late charges and attorneys fees and costs of \$700.00.

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

The property is also subject to another mortgage in favor of ABN AMRO Mortgage Group in excess of \$160,000.00.

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 (Bkrcty. S.D.N.Y., 1986).

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

Dated this 4th day of October, 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**

**CASE NO. 04-33703 DDO**

Robert S. Tollefson  
SSN XXX-XX-0799  
Carole J. Tollefson  
SSN XXX-XX-1859

**AFFIDAVIT OF  
DIONNE ROBERTS**

Debtor.

Dionne Roberts, being first duly sworn on oath, deposes and states:

1. That she is the Bankruptcy Specialist of GMAC Mortgage Corporation.

2. GMAC Mortgage Corporation, 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 October 24, 2003, executed by Robert S. Tollefson and Carole J. Tollefson, husband and wife, recorded January 13, 2004, as Document No. 3416068. The property is located in Washington County, Minnesota and is legally described as follows, to-wit:

All that parcel of land in City of Woodbury, Washington County, State of Minnesota, as more fully described in Deed Doc.# 298506, ID# R1702821140004, being known and designated as metes and bounds property. Abstract property. The South 172 feet of the East 253 feet of the Southeast Quarter of the Northeast Quarter of Section 17, Township 28, Range 21, according to the U.S. Government survey thereof, subject to the easement of the public highway. By Fee Simple Deed from Wallace T. Porath and Mildred W. Porath, husband and wife as set forth in Doc.# 298506 dated 04/26/1972 and recorded 05/02/1972, Washington County Records, State of Minnesota.

3. That she has reviewed the account records relating to the Tollefson's mortgage loan, account no. 8126804546.

4. That as of September 27, 2004, the following amounts were owing on this account:

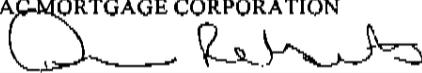
Unpaid Principal:	\$49,508.80
Interest through September 27, 2004	1,942.85
Attorney's Fees:	700.00
Late Charges:	100.00
Non-Escrow Advances:	74.74

**TOTAL:** **\$52,321.39**

5. That the mortgage loan is delinquent for post-petition monthly mortgage payments for the months of July, 2004 through September, 2004 in the amount of \$501.14 each.

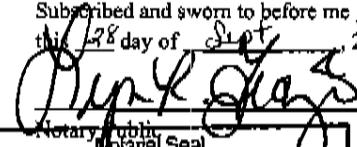
6. This affidavit is given in support of the motion of GMAC Mortgage Corporation for relief from the automatic stay.

GMAC MORTGAGE CORPORATION

By 

Its Bankruptcy Specialist

Subscribed and sworn to before me  
this 28 day of Sept, 2004.

  
Notary Public  
Notarial Seal

Lynn R. Frazier, Notary Public  
Horsham Twp., Montgomery County  
My Commission Expires July 16, 2008

Member, Pennsylvania Association Of Notaries

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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SSN XXX-XX-1859

**CASE NO. 04-33703 DDO**

Debtor.

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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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 October 4, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Dionne Roberts, 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:

Robert S. Tollefson  
Carole J. Tollefson  
2470 Tower Drive  
Woodbury, MN 55125

Heartland Credit Union  
c/o Stewart, Zlimen & Jungers, LTD  
430 Oak Grove Street, #200  
Minneapolis, MN 55403

Robert J. Hoglund  
PO Box 130938  
Roseville, MN 55113

Jasmine Z. Keller  
12 South 6<sup>th</sup> St Ste 310  
Minneapolis, MN 55402

ABN AMRO Mortgage Group  
4242 N Harlem Ave  
Norridge, IL 60706-1204

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, MN 55415

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

Dated this 4th day of October, 2004.

/e/ Joanna Cheyka  
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re:

Robert S. Tollefson  
SSN XXX-XX-0799  
Carole J. Tollefson  
SSN XXX-XX-1859

**CHAPTER 13 CASE**

**CASE NO. 04-33703 DDO**

Debtor.

**ORDER**

The above entitled matter came on for hearing upon motion of GMAC Mortgage Corporation (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on October 20, 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 October 24, 2003, executed by Robert S. Tollefson and Carole J. Tollefson, husband and wife, recorded on January 13, 2004, as Document No. 3416068 covering real estate located in Washington County, Minnesota, legally described as follows, to-wit:

All that parcel of land in City of Woodbury, Washington County, State of Minnesota, as more fully described in Deed Doc #298506, ID # R1702821140004, being known and designated as metes and bounds property. Abstract Property. The South 172 feet of the East 253 feet of the Southeast Quarter of the Northeast Quarter of Section 17, Township 28, Range 21, according to the U.S. Government Survey thereof, subject to the easement of the public highway. By fee simple deed from Wallace T. Porath and Mildred W. Porath, husband and wife as set forth in Doc #298506 Dated 04/26/1972 and recorded 05/02/1972, Washington County Records, State of 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