

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Kristine Hegstrom Callies

NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY

Debtors

Chapter 13, Case No. 04-33713

-----  
TO: Kristine Hegstrom Callies, INCLUDING TRUSTEE AND OTHER INTERESTED  
PARTIES

1. America's Servicing Company, (*Movant*), a corporation, by its undersigned attorneys, moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 10:30 am on September 20, 2004, in Courtroom 228B, 200 Federal Building, 316 North Robert Street, St. Paul, MN 55101 or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than on September 15, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than September 9, 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 Rules of Bankruptcy Procedure 5005 and Local Rule 1070-1, and is a core

proceeding. The petition commencing this Chapter 13 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 Rules of Bankruptcy Procedure 4001. This motion is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 1201-1215. Movant requests relief with respect to a mortgage lien encumbering real property of Debtors.

6. Debtors above-named are the owners of certain real property located at 9190 East Point Douglas Lane, Cottage Grove, MN 55016, legally described as follows, to-wit:

Lot 25, Block 1, Groveland Cottages, CIC No. 85, Washington County,  
Minnesota

7. The indebtedness of Kristine Hegstrom Callies is evidenced by a Promissory Note and Mortgage dated March 27, 2003, filed of record in the Washington County Recorder's office on June 4, 2003, and recorded as Document No. 3341914. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A. Said mortgage was subsequently assigned to Movant.

8. The Debtors were current on their mortgage obligation to Movant at the time of the bankruptcy filing. Movant has not filed a Proof of Claim nor receiving payments from the Trustee.

9. Pursuant to said Plan, the Debtors were to maintain monthly payments due and payable pursuant to the indebtedness to Movant outside the Plan.

10. The Debtors have failed to pay the monthly payments on the indebtedness, outside the Plan for the months of June 1, 2004 to the present date and as of the hearing date September 1, 2004 will be due for a total delinquency of \$4,682.28 together with reasonable attorneys fees and costs incurred pursuant to the terms of the note and mortgage.

11. By reason of the foregoing, Debtors are in default on payments under the note, mortgage and the Chapter 13 Plan. Movant is inadequately secured and entitled to have the automatic stay lifted and vacated so it can commence foreclosure against the property under the mortgage pursuant to Minnesota Statutes.

WHEREFORE, Movant by its undersigned attorney, moves the Court for an Order that the automatic stay provided by 11 U.S.C. Section 362 (A) be terminated to permit Movant to foreclose its mortgage on the subject property, and for such other and further relief as may be just and equitable.

Dated: September 3, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo  
Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

IN RE:

Kristine E. Hegstrom Callies

AFFIDAVIT OF PETITIONER

Debtor

Chapter 13, Case No. 04-33713  
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STATE OF GEORGIA

COUNTY OF FULTON

Diane Sanders, being first duly sworn, deposes and states she is authorized representative of Movant and has direct real-time access to the computer records of Movant which are maintained in the ordinary course of business and that she has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her knowledge to the best of her information.

Diane Sanders

Subscribed and sworn to before me this  
23rd day of July, 2004.

Dunneah Wellborn  
Notary Public



3341914



Office of the  
County Recorder  
Washington County, MN

Certified True and/or recorded on:  
2003/06/04 1:11:00 PM

3341914



Deby Koehn  
County Recorder

*Deby Koehn*

WASHINGTON COUNTY

Receipt No: 132990 Date: 04/11/2003  
Registration tax hereon of \$374.24 Paid  
MN Conservation Fund M.S. 473H \$5.00 Paid  
Molly F. O'Rourke, Auditor by B.J. Wetzel

[Space Above This Line For Recording Data]

State of Minnesota

MORTGAGE

FHA Case No.

271-8881780 703

30-

THIS MORTGAGE ("Security Instrument") is given on MARCH 27, 2003  
The Mortgagor is ANTHONY D. CALLIES and Kristine E. Callies, Husband and Wife

Metro Legal Services  
EDIRET 387755 A  
253720 MTG 179707

("Borrower"). This Security Instrument is given to HOMESERVICES LENDING, LLC DBA EDINA REALTY  
MORTGAGE

which is organized and existing under the laws of THE STATE OF DELAWARE . and  
whose address is P.O. BOX 10304, DES MOINES, IA 503060304

("Lender"). Borrower owes Lender the principal sum of  
ONE HUNDRED SIXTY TWO THOUSAND SEVEN HUNDRED FOURTEEN AND 00/100

Dollars (U.S. \$\*\*\*\*\*162,714.00 ).

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 APRIL 01, 2033

and for interest at the yearly rate of 6.000

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

0021887005

FHA Minnesota Mortgage - 4/96

48(MN) (8702)

Page 1 of 8

Initials: *ADC REC*

VMP MORTGAGE FORMS - (800)621-7221



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 WASHINGTON County, Minnesota:  
LOT 25, BLOCK 1, CROVELAND COTTAGES, CIC NO. 55, WASHINGTON COUNTY, MINNESOTA

27400

THIS IS A PURCHASE MONEY SECURITY INSTRUMENT.

TAX STATEMENTS SHOULD BE SENT TO: WELLS FARGO HOME MORTGAGE, INC., P.O. BOX 10304, DES MOINES, IA 503060304

which has the address of 9190 POINT DOUGLAS LANE S, COTTAGE GROVE Minnesota 55016 (Street, City), (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.

initials: ADK REC

(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.

ADC KCC

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)).

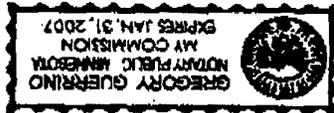
Condominium Rider     
  Growing Equity Rider     
  Other (specify) \_\_\_\_\_  
 Planned Unit Development Rider     
  Graduated Payment Rider     
 ARM RIDER

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:

_____	<i>Anthony D. Callies</i> _____ (Seal) ANTHONY D. CALLIES -Borrower
_____	<i>Kristine E. Callies</i> _____ (Seal) KRISTINE E. CALLIES -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) KRISTINE E. CALLIES -Borrower

ADJ KFC

This instrument was prepared by  
RHONDA GERTMAN  
HOMESERVICES LENDING, LLC DBA EDINA REALTY MORTGAGE  
7900 KERRIS AVE SOUTH, SUITE 300  
BLOOMINGTON, MN 554311111



Notary Public  
*Gregory Guerrero*

My Commission Expires: (year)

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

STATE OF MINNESOTA,  
Washington County ss:  
On the 27th day of MARCH, 2003, before me appeared ANTHONY D. CALLES AND KRISTINE E. CALLES, HUSBAND AND WIFE

## PLANNED UNIT DEVELOPMENT RIDER

FHA Case No.

271-8883780 703

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 27<sup>TH</sup> day of  
MARCH, 2003, 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  
HOMESERVICES LENDING, LLC DBA EDINA REALTY MORTGAGE

("Lender") of the same date and covering the Property described in the Security Instrument and located at:  
9190 POINT DOUGLAS LANE S, COTTAGE GROVE, MN 55016

[Property Address]

The Property Address is a part of a planned unit development ("PUD") known as

[Name of Planned Unit Development]

**PUD 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 (or equivalent entity holding title to common areas and facilities), acting as trustee for the homeowners, maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property located in the PUD, including all improvements now existing or hereafter erected on the mortgaged premises, 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

9021887005

FHA Multistate PUD Rider - 10/95

589U (870S)

Page 1 of 2

VMP MORTGAGE FORMS - (600NS21-7281)

Initials: *ADC REC*



of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property or to common areas and facilities of the PUD. 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.

- B. Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments creating and governing the PUD.
- C. If Borrower does not pay PUD 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 PUD Rider.

*Kristine E. Callies* (Seal)  
KRISTINE E. CALLIES -Borrower

*Anthony D. Callies* (Seal)  
ANTHONY D. CALLIES -Borrower

\_\_\_\_ (Seal)  
-Borrower

3341915



Office of the  
County Recorder  
Washington County, MN

Current and meter receipt on:  
2008/06/04 1:11:00 PM

3341915



*Sheila Johnson*

**ASSIGNMENT OF MORTGAGE**

FOR VALUABLE CONSIDERATION, HOMESERVICES LENDING, LLC DBA EDINA REALTY MORTGAGE,

existing under the laws of THE STATE OF DELAWARE, Assignor (whether one or more), hereby sells, assigns and transfers to WELLS FARGO HOME MORTGAGE INC., a Corporation existing under the laws of THE STATE OF CALIFORNIA, whose address is P.O. Box 5137, Des Moines, IA, 503065137, Assignee (whether one or more), the Assignor's interest in the Mortgage dated **MARCH 27, 2003**, executed by

20-  
5-

**ANTHONY D. CALLIES AND KRISTINE E. CALLIES, HUSBAND AND WIFE**

as Mortgagor, to HOMESERVICES LENDING, LLC DBA EDINA REALTY MORTGAGE as Mortgagee, and filed for record **June 4, 2008** as Document Number (or in Book of **3341914**

Page **1**, in the Office of the (County Recorder) (Registrar of Titles) of **WASHINGTON** County, Minnesota, together with all right and interest in the note and obligations therein specified and the debt thereby secured. Assignor covenants with Assignee, its successors and assigns, that there is still due and unpaid of the debt secured by the Mortgage the sum of

**ONE HUNDRED SIXTY TWO THOUSAND SEVEN HUNDRED FOURTEEN**

**DOLLARS**, with interest thereon from **WASHINGTON**, and that Assignor has good right to sell, assign and transfer the same.

Prepared By:  
**HOMESERVICES LENDING, LLC**  
DBA Edina Realty Mortgage  
6906 Franco Ave South Suite 410  
Edina, MN 55435

**ASSIGNOR**

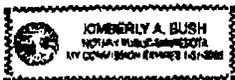
**HOMESERVICES LENDING, LLC**  
DBA Edina Realty Mortgage

By *[Signature]*  
Its Assistant Vice President

By *[Signature]*  
Its Assistant Vice President

**STATE OF MINNESOTA**  
**COUNTY OF Hennepin**

This instrument was acknowledged before me on **MARCH 27, 2003** by **Sheila Johnson, Assistant Vice President** and **Dan Karnowski, Assistant Vice President** of **HOMESERVICES LENDING, LLC DBA Edina Realty Mortgage**



*Kimberly A. Bush*

NMFL #0672 4/97  
Minnesota Assignment of Mortgage: 3/97

Metro Legal Services  
BORET 387755 A  
253720 ASN 179708

3444083



Office of the  
County Recorder  
Washington County, MN

Certified filed and/or recorded on:  
2004/06/02 11:00:00 AM

3444083



Steve Kasmann  
County Recorder

*Steve Kasmann*

### ASSIGNMENT OF MORTGAGE

FOR VALUABLE CONSIDERATION, Wells Fargo Bank, N.A., successor by merger to Wells Fargo Home Mortgage, Inc., Assignor, hereby sells, assigns and transfers <sup>2000</sup> to SFJV-2003-1, LLC, 5325 Spectrum Drive, Fredrick, MD 21703, Assignee, the Assignor's interest in the Mortgage dated March 27, 2003 executed by Anthony D. Callies and Kristine E. Callies, husband and wife, as mortgagors, to Homeservices Lending, LLC DBA Edina Realty Mortgage, a Delaware corporation, as mortgagee, and filed for record in the Office of the County Recorder, in and for the County of Washington, Minnesota, on June 4, 2003 as Document No. 3341914; which mortgage was assigned to Wells Fargo Home Mortgage, Inc., a California corporation, by Assignment of Mortgage dated March 27, 2003 and filed for record with said County Recorder on June 4, 2003 as Document No. 3341915; together with all rights and interest in the note and obligations therein specified and the debt thereby secured. Assignor covenants with Assignee, its successors and assigns, that Assignor has good right to sell, assign and transfer the same.



3454495



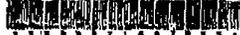
Office of the  
County Recorder  
Washington County, MN

Current Book and/or record # is:  
2004/0720 8:00:00 AM

3454495

RETURN TO: SMIA/Wesley Hess  
P.O. Box 24017 MN / WASHINGTON  
Houston, TX 77254-0817 463 2401

BORROWERS: CALLIES ANTHONY D AND



19.50  
**RECORD FIRST**

Loan Number: 0021667005  
FHA Loan No: 271-6883780

Prepared by:  
SMI



Sherry Doza  
3910 Kirby Drive, Suite 300  
Houston, Texas 77098

**ASSIGNMENT of MORTGAGE AND OTHER LOAN DOCUMENTS**

WELLS FARGO HOME MORTGAGE, INC. whose address is ONE HOME CAMPUS, DES MOINES, IA 50328 ("Assignor"), in consideration of Ten Dollars (\$10.00) and other good and valuable consideration received by Assignor, hereby assigns, transfers, sets over and conveys to THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT, WASHINGTON, D.C., and his/her successors and assigns, without recourse, the following:

1. that certain Mortgage dated 3/27/2003, and recorded Instrument/Document No. 3341914, among the land records of Washington County, Minnesota, as amended or modified (the Mortgage), which Mortgage secures that certain promissory note dated 3/27/2003 (the "Note"); and

Borrower: ANTHONY D. CALLIES AND KRISTINE E CALLIES

Recording Ref: Instrument/Document No. 3341914

2. such other documents, agreements, instruments and other collateral that evidence, secure or otherwise relate to Assignor's right, title or interest in and to the Mortgage and/or the Note, including without limitation the title insurance policies and hazard insurance policies that might presently be in effect.

TO HAVE AND TO HOLD unto Assignee and its successors and assigns forever.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed and delivered by its duly authorized officer as of the 3 day of December, 2003

WELLS FARGO HOME MORTGAGE, INC.

By: *Keith Schares*  
KEITH SCHARÉS  
VICE PRESIDENT OF LOAN DOCUMENTATION

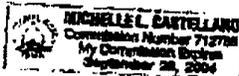
Name and Address of Assignee:

Secretary of Housing and Urban Development  
451 7th Street, S.W.  
Washington, D.C. 20410

**ACKNOWLEDGMENT**

STATE OF IOWA  
COUNTY OF POLK

The foregoing instrument was acknowledged before me on Dec 3 2003 by KEITH SCHARÉS, as Vice President for WELLS FARGO HOME MORTGAGE, INC. in the capacity noted in the foregoing instrument.



*Michelle Cartellano*  
Notary Public

MY COMMISSION EXPIRES: September 28, 2004  
Commission Number 712728  
My Commission Expires  
September 28, 2004

0021667005 - HUD LEHM-HJD001

CALLIES, ANTHONY



3454496



Office of the  
County Recorder  
Washington County, MN

Certified filed and/or recorded on:  
2004/07/20 8:00:00 AM

3454496



Notary Public

*W. J. Johnson*

19.50

RETURN TO: BMWWealey West  
P.O. Box 30817 MN / WASHINGTON  
Houston, TX 77254-0117 465,2401  
BORROWERS: CALLIES ANTHONY D AND

RECORD SECOND

Loan Number: 0021887005  
FHA Loan No: 271-8883780

amt# 0

**ASSIGNMENT of MORTGAGE AND OTHER LOAN DOCUMENTS**

The Secretary of Housing and Urban Development, whose address is 451 7th Street, S.W., Washington, D.C. 20410 ("Assignor"), in consideration of Ten Dollars (\$10.00) and other good and valuable consideration received by Assignor, hereby assigns, transfers, sets over and conveys to SFJV 2003-1, LLC and its successors and assigns, without recourse, the following:

1. that certain Mortgage dated 3/27/2003, and recorded Instrument/Document No. 3341914, among the land records of Washington County, Minnesota, as amended or modified (the Mortgage), which Mortgage secures that certain promissory note dated 3/27/2003 (the "Note"); and

Borrower: ANTHONY D. CALLIES AND KRISTINE E CALLIES

Recording Ref: Instrument/Document No. 3341914

2. such other documents, agreements, instruments and other collateral that evidence, secure or otherwise relate to Assignor's right, title or interest in and to the Mortgage and/or the Note. Including without limitation the title insurance policies and hazard insurance policies that might presently be in effect.

TO HAVE AND TO HOLD unto Assignee and its successors and assigns forever.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed and delivered by its duly authorized officer as of the 2nd day of February, 2004.

Witness:

*[Signature]*

THE SECRETARY OF HOUSING AND URBAN  
DEVELOPMENT

By: *[Signature]*  
JOY A. RUSSO

AUTHORIZED AGENT

Witness:

*[Signature]*

Name and Address of Assignee:  
SFJV 2003-1, LLC  
745 7th Avenue  
5th Floor  
New York, NY 10019

Prepared by:  
SMI

*[Signature]*

Sherry Doza  
3910 Kirby Drive, Suite 300  
Houston, Texas 77008

**ACKNOWLEDGMENT**

CITY OF WASHINGTON  
DISTRICT OF COLUMBIA

The foregoing instrument was acknowledged before me on Feb. 2  
2004 by Anthony D. Callies, as Authorized Agent for the Secretary of  
Housing and Urban Development, in the capacity noted in the foregoing instrument.



*[Signature]*  
Notary Public  
My commission expires 10-14-2008

0021887005 - SFJV LEHM-HUD601

CALLIES, ANTHONY



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Kristine Hegstrom Callies

MEMORANDUM OF LAW

Debtors

Chapter 13, Case No. 04-33713  
-----

11 U.S.C. Section 362(d) provides that on request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under section (a) of this section for cause, including lack of adequate protection of an interest in property of such party in interest. Failure of a Chapter 13 debtor to make postconfirmation payments to a mortgagee is sufficient cause for relief from the automatic stay. Reinbold vs. Dewey County Bank, 942 F.2d 1304 (8th Cir. 1991). Following the debtors' filing of the petition on June 23, 2004 no payment has been made to movant for the month(s) of June 1, 2004 to the present and as of the hearing date September 1, 2004 will be due. Accordingly, cause exists for the granting of relief from the automatic stay.

WHEREFORE, America's Servicing Company respectfully requests this Court to grant movant relief from the automatic stay of 11 U.S.C. Section 362(a).

Dated: September 3, 2004. USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo  
Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888

U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Kristine Hegstrom Callies

Debtors

UNSWORN DECLARATION  
FOR PROOF OF SERVICE

Chapter 13, Case No. 04-33713  
-----

Erin Kay Buss, employed on this date by USSET & WEINGARDEN, attorney(s) licensed to practice law in this court, with office address of Suite 120, 4500 Park Glen Road, Minneapolis, Minnesota 55416, upon penalty of perjury, declares that on September 3, 2004, I served the annexed Notice of Hearing and Motion for Relief from Automatic Stay upon each of the entities named below by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

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

Jasmine Z. Keller  
Chapter 13 Trustee  
310 Plymouth Building, 12 South 6th Street  
Minneapolis, MN 55402

Craig W. Andresen  
Attorney at Law  
2001 Killebrew Drive, Suite 330  
Bloomington, MN 55425

Kristine Hegstrom Callies  
9190 East Point Douglas Lane S  
Cottage Grove, MN 55016

Groveland Cottages Association Inc  
C/O Gretchen S. Schellhas  
3300 Edinborough Way Ste 600  
Edina MN 55435

/E/ Erin Kay Buss  
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

-----  
In Re:

Kristine Hegstrom Callies

ORDER

Debtors.

Chapter 13, Case No. 04-33713  
-----

The above entitled matter came on for hearing upon motion of America's Servicing Company, (*Movant*) pursuant to 11 U.S.C. Section 362 on September 20, 2004 at the U.S. Bankruptcy Court, St. Paul, Minnesota. Appearances were as noted in the record. 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:

The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

Lot 25, Block 1, Groveland Cottages, CIC No. 85, Washington County,  
Minnesota

Movant may proceed to foreclose its mortgage in accordance with Minnesota Statutes. Movant's request for attorneys fees and costs shall not be considered as this is governed by state law. Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this order is effective immediately.

Dated this \_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Judge of the Bankruptcy Court