

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

Case No. 04-42047 NCD
Chapter 13 Case

In Re:

Brian T. Peterson and
Ginelle M. Peterson,

Debtors.

**OBJECTION BY PROVIDENT BANK TO
CONFIRMATION OF CHAPTER 13 PLAN**

1. Provident Bank/PCFS Mortgage Resources (“Respondent”) is the holder of a claim in the above-captioned case, and, by and through its undersigned attorney, hereby objects to confirmation of the proposed Modified Chapter 13 Plan.
2. The petition commencing this Chapter 13 case was filed on April 13, 2004. At that time, Debtors filed a Chapter 13 Plan. On or about June 7, 2004, Debtors filed a Modified Chapter 13 Plan (“Plan”) and a notice indicating that the Plan is scheduled for confirmation hearing on July 8, 2004.
3. This objection arises under 11 U.S.C. Sec. 1324 and Bankruptcy Rule 3020, and is filed under Bankruptcy rule 9014 and applicable local rules. Respondent objects to confirmation of the proposed Plan and requests an Order denying confirmation of the proposed Plan.
4. Respondent is a creditor of Debtors, and is a party in interest. Respondent has filed a proof of claim alleging a secured claim in Debtors’ real property by virtue of a mortgage signed by Debtors and assigned to Respondent. See Exhibit A to Affidavit of William G. Selman III.

5. The balance outstanding on the debt owed to Respondent by Debtors is \$252,160.52. There are pre-petition arrearages on the debt of \$26,630.31.
6. Debtors have scheduled Respondent's claim as a general unsecured claim describing Respondent's claim as an "unperfected real estate loan."
7. The Plan proposes to treat Respondent's claim as a general unsecured claim.

The Plan is objected to on the following grounds:

- a. That the Plan provides for improper treatment of Respondent's secured claim. 11 U.S.C. Sec. 1322(a)(3).
- b. That the Plan improperly modifies the rights of a secured claim on real property of the Debtors' principal residence. 11 U.S.C. Sec. 1322(b)(2).

WHEREFORE, Provident Bank/PCFS Mortgage Resources requests that the Court deny confirmation of Debtors' proposed Modified Chapter 13 Plan, and requests such other and further relief as the Court deems just and equitable.

Dated: June 30, 2004

/e/ William G. Selman III
William G. Selman III (#195716)
301 Fourth Ave. S., Suite 377
Minneapolis, MN 55415
Telephone: (612) 333-6000
Attorney for Provident Bank

DUNKLEY AND BENNETT, P.A.

Dated: June 30, 2004

/e/ T. Chris Stewart
T. Chris Stewart (#152316)
701 Fourth Ave. S., Suite 700
Minneapolis, MN 55415
Telephone: (612) 339-1290

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

Case No. 04-42047 NCD
Chapter 13 Case

In Re:

Brian T. Peterson and
Ginelle M. Peterson,

**AFFIDAVIT OF
WILLIAM G. SELMAN III**

Debtors.

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

William G. Selman III (“Affiant”), being first duly sworn upon oath, states and alleges as follows:

1. I am the attorney of record for Provident Bank/PCFS Mortgage Resources (“Respondent”) in the above-captioned matter, and I submit this Affidavit in conjunction with the Objection of Provident Bank to Confirmation of Chapter 13 Plan served and filed concurrently herewith.
2. On May 24, 2004 Respondent filed a secured claim in the amount of \$252,160.52 by virtue of a mortgage on the homestead of the Debtors. A true and correct of the proof of claim form is attached hereto as Exhibit A.
3. At the June 2, 2004 Meeting of Creditors in the above-captioned case, Brian and Ginelle Peterson (“Debtors”) testified as follows:
 - a. Debtors refinanced their home in 2002 through New Century Mortgage Corporation.

- b. Debtors signed a promissory note dated April 24, 2002 whereby they promised to pay New Century Mortgage \$228,000.00 at 8.5% interest.
 - c. To secure the promissory note, Debtors signed a mortgage dated April 24, 2002 thereby granting a mortgage to New Century Mortgage Corporation.
 - d. Debtors were aware that the above-referenced note and mortgage were assigned to Respondent.
 - e. Following the closing on the refinance, Debtors made approximately ten payments.
 - f. Subsequent thereto, Debtors discontinued all payments on the note and mortgage.
4. Apparently, through inadvertence and error, the mortgage of New Century Mortgage Corporation dated April 24, 2002 was not filed of record.
5. In February 2004, Respondent commenced a foreclosure by action in Sherburne County District Court whereby Respondent sought a court order directing the Sherburne County Recorder to accept a copy of the mortgage for recording and granting a decree of foreclosure of the mortgage.
6. Respondent filed a Notice of Lis Pendens with the Sherburne County Recorder thereby providing constructive notice of the pending Sherburne County District Court action. A true and correct copy of the Notice of Lis Pendens is attached hereto Exhibit B.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated: June 30, 2004

/e/ William G. Selman III
William G. Selman III (#195716)

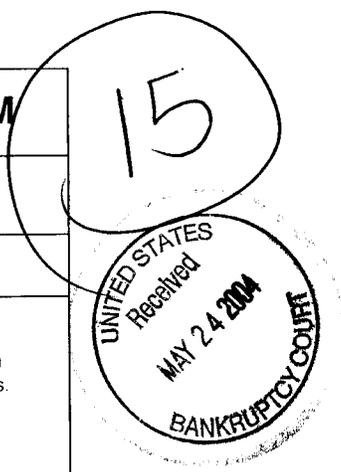
Subscribed and sworn to before me
this 30th day of June, 2004

/e/ Lizzette Cordero
Notary Public

EXHIBIT A

FORM 10. PROOF OF CLAIM

United States Bankruptcy Court District of Minnesota, Minneapolis Division	PROOF OF CLAIM
In re (Name of Debtor) BRIAN T. PETERSON -- SS No. XXX-XX-1340 GINELLE M PETERSON -- SS No. XXX-XX-7196	Case Number 04-42047
NOTE: This form should be used to make a claim for an administrative expense arising after the commencement of the case. A "request" of payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503	
Name of Creditor <i>(The person or entity to whom the debtor owes money or property)</i> PCFS Mortgage Resources	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.
Name and Address Where Notices Should Be Sent PCFS Mortgage Resources Attn: Sheila Hall 309 Vine Street MS 175D Cincinnati, OH 45202-	
Telephone No. (513)639-5806	



THIS SPACE IS FOR COURT USE ONLY

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR: 0000610229	Check here if this claim <input type="checkbox"/> replaces a previously filed claim, dated: _____ <input type="checkbox"/> amends
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1. BASIS FOR CLAIM

<input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input checked="" type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other (Describe briefly)	<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114 (a) <input type="checkbox"/> Wages, salaries, and compensation (Fill out below) Your social security number _____ Unpaid compensation for services performed from _____ (date) to _____ (date)
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2. DATE DEBT WAS INCURRED 04/24/2002	3. IF COURT JUDGMENT, DATE OBTAINED:
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4. CLASSIFICATION OF CLAIM. Under the Bankruptcy Code all claims are classified as one or more of the following: (1) Unsecured nonpriority, (2) Unsecured Priority, (3) Secured. It is possible for part of a claim to be in one category and part in another. CHECK THE APPROPRIATE BOX OR BOXES that best describe your claim and STATE THE AMOUNT OF THE CLAIM AT TIME CASE FILED.

<input checked="" type="checkbox"/> SECURED CLAIM \$ <u>252,160.52</u> Attach evidence of perfection of security interest Brief Description of Collateral <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other (Describe briefly) Amount of arrearage and other charges at time case filed included in secured claim above, if any \$ <u>26,630.31</u> <input type="checkbox"/> UNSECURED NONPRIORITY CLAIM \$ _____ A claim is unsecured if there is no collateral or lien on property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim. <input type="checkbox"/> UNSECURED PRIORITY CLAIM \$ _____ Specify the priority of the claim.	<input type="checkbox"/> Wages, salaries, or commissions (up to \$4000)* earned not more than 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507 (a) (3) <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507 (a) (4) <input type="checkbox"/> Up to \$1,800* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6) <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties of governmental units - 11 U.S.C. § 507(a)(8) <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a) _____ <small>*Amounts are subject to adjustment on 4/11/98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
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5. TOTAL AMOUNT OF CLAIM AT THE TIME CASE FILED:

\$ <u>0</u> (Unsecured)	\$ <u>252,160.52</u> (Secured)	\$ <u>0</u> (Priority)	\$ <u>252,160.52</u> (Total)
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Check this box if claim includes charges in addition to the principal amount of the claim. Attach itemized statement of all additional charges.

<p>6. CREDITS AND SETOFFS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor.</p> <p>7. SUPPORTING DOCUMENTS: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interests. If the documents are not available, explain. If the documents are voluminous, attach a summary.</p> <p>8. TIME-STAMPED COPY: To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.</p>	THIS SPACE IS FOR COURT USE ONLY		
<table style="width:100%;"> <tr> <td style="width:20%;">Date 05/20/2004</td> <td style="width:80%;">Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any) <i>Sheila Hall</i> Sheila Hall, Bankruptcy Specialist</td> </tr> </table>	Date 05/20/2004	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any) <i>Sheila Hall</i> Sheila Hall, Bankruptcy Specialist	
Date 05/20/2004	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any) <i>Sheila Hall</i> Sheila Hall, Bankruptcy Specialist		

Penalty for presenting fraudulent claim: Fine up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Exhibit 'A'

Case No.: 04-42047

Debtors: BRIAN T. PETERSON -- SS No. XXX-XX-1340
GINELLE M PETERSON -- SS No. XXX-XX-7196

Address: 14654 120TH STREET
BECKER, MN 55308

Loan No.: 0000610229

On filing petition 04/13/04 debtor(s) owed claimant \$252,160.52 plus interest at 8.5000% per annum from 05/01/03.

ARREARAGES owed as of 04/13/04, the date of filing of the petition.

From	To	Type of Charge	#	Unit Charge	Total
06/01/2003	04/01/2004	Payment	11	1,753.13	19,284.43
		Advances	-	-	847.00
		Accrued Late Charge	-	-	1,477.88
		Insurance	-	-	4,986.00
		NSF Charges	-	-	35.00
			-	-	-
				Subtotal:	26,630.31
				TOTAL:	26,630.31

The above figures represent the delinquency at the time of filing and do not reflect payments received after the date of the filing of the bankruptcy.

Late charges accrue to the account when payments are received 15 days past the payment due date.

Exhibit 'A-1'

Case No.: 04-42047

Date: 05/20/2004

Debtors: BRIAN T. PETERSON -- SS No. XXX-XX-1340
GINELLE M PETERSON -- SS No. XXX-XX-7196

Address: 14654 120TH STREET
BECKER, MN 55308

Loan No.: 0000610229

On filing petition 04/13/04 debtor(s) owed claimant \$226,226.37 plus interest at 8.5000% per annum from 05/01/03.

The Total Debt owed at petition:

Principal Balance	226,226.37
Interest	18,588.27
Advances	847.00
Accrued Late Charge	1,477.88
Insurance	4,986.00
NSF Charges	35.00

Total Debt: 252,160.52

The above figures represent the amount owed at the time of filing and do not reflect payments received after the date of the filing of the Bankruptcy.

[Space Above This Line For Recording Data]

MORTGAGE

Return To:
NEW CENTURY MORTGAGE CORPORATION

**10400 VON KARMAN, SUITE 1000
IRVINE, CA 92612**

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated April 24, 2002 together with all Riders to this document.

0000610220

MINNESOTA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3024 1/01

Page 1 of 15

Page 1 of 15

INITIALS: *SB CP*

VMP MORTGAGE FORMS (000)521-7281



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(B) "Borrower" is
BRIAN T PETERSON AND CINELLE M PETERSON AND ~~JAMES~~ ~~SLIP-48~~ JOINT TENANTS

Borrower is the mortgagor under this Security Instrument.
(C) "Lender" is NEW CENTURY MORTGAGE CORPORATION

Lender is a CORPORATION
organized and existing under the laws of CALIFORNIA
Lender's address is 18400 VON KARMAN, SUITE 1000
IRVINE, CA 92612

Lender is the mortgagee under this Security Instrument.
(D) "Note" means the promissory note signed by Borrower and dated April 24, 2002
The Note states that Borrower owes Lender Two Hundred Twenty-Eight Thousand and
No/100 Dollars
(U.S. \$ 228,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic
Payments and to pay the debt in full not later than May 1, 2032

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

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges
due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following
Riders are to be executed by Borrower (check box as applicable):

- Adjustable Rate Rider
- Balloon Rider
- VA Rider
- Condominium Rider
- Planned Unit Development Rider
- Biweekly Payment Rider
- Seasonal Home Rider
- 1-4 Family Rider
- Other(s) (specify)

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations,
ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final,
non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other
charges that are imposed on Borrower or the Property by a condominium association, homeowners
association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check,
draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument,
computer, or magnetic tape as to order, instruct, or authorize a financial institution to debit or credit an
account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine
transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

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

Initials: [Signature]

0000010000

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 3) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

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

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located in the COUNTY

of **SHENBURN**

[Name of Recording Jurisdiction];

[Type of Recording Jurisdiction]

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: **051322470**
14884 120TH STREET
SECKER
("Property Address"):

which currently has the address of
[Street]
(City), Minnesota **55308** [Zip Code]

GP
[Signature]

0000610228

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.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.

Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payment are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second in any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

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Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentally, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and Impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

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, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; 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 can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time reappraisals or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower. Borrower's liability for the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

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consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by

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Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstated as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to 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 any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer'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 can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be

14. **Treated as a partial prepayment without any prepayment charge** (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. 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.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument at the time such documents are executed or within a reasonable time thereafter.

18. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may

reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. **Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes 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; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. 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 (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) 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, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower by certified mail to the address of the Property or another address designated by Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstata after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and 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 Section 22, 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.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

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

25. Interest on Advances. The interest rate on advances made by Lender under this Security Instrument shall not exceed the maximum rate allowed by Applicable Law.

[Handwritten initials]

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witness:

Brian T Peterson (Seal)
BRIAN T PETERSON -Borrower

Shirley M Peterson (Seal)
SHIRLEY M PETERSON -Borrower

(Seal)
-Borrower

STATE OF MINNESOTA;

County is:

On this *2nd* day of *May*, 2002, before me appeared
Brian T. Peterson and Ginelle M. Peterson

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

Melissa A. Bieber

Notary Public
My Commission Expires:



This instrument was drafted by:
NEW CENTURY MORTGAGE CORPORATION

Tax statements for the real property described in this instrument should be sent to:
**BRIAN T PETERSON
14886 120TH STREET
BECKER, MN 55306**

8(MN) (0001).01

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Initials: *BT* 0000810220
Form 3024 1/01

NOTE **CERTIFIED TRUE COPY OF ORIGINAL**April 24, 2002
(Date)

BECKER

[City]

MINNESOTA

[State]

14654 120TH STREET , BECKER, MINNESOTA 55308
(Property Address)**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$ 228,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is
NEW CENTURY MORTGAGE CORPORATION

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

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

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 8.5000 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 5(B) of this Note.

3. PAYMENTS**(A) Time and Place of Payments**

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

I will make my monthly payment on the 1st day of each month beginning on June 1, 2002

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on May 1, 2032, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 18400 VON KARMAN, SUITE 1000

IRVINE, CA 92612

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

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 1,753.13

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A prepayment of all of the unpaid principal is known as a "Full Prepayment." A prepayment of only part of the unpaid principal is known as a "Partial Prepayment."

If within the first 42 months from the execution of the Security Instrument I make a Full Prepayment, I will pay a prepayment charge in an amount equal to the lesser of two (2) percent of the unpaid principal balance or 60 days interest on the unpaid principal balance.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a Partial Prepayment.

MINNESOTA FIXED RATE NOTE - Single Family - With Prepayment Penalty

Page 1 of 1

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-105N(MN) (0005)

VMP MORTGAGE FORMS - (800)521-7291

Initials: 

6. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. 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. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I 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 the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. APPLICABLE LAW

This Note shall be governed by the laws of the State of Minnesota. If a law, which applies to this loan and sets maximum loan charges is finally interpreted so that the interest and other charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such interest or other charge shall be reduced by the amount necessary to reduce the interest or other charge to the permitted limit; and (b) any sums already collected from me which exceed permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a Partial Prepayment, but in no event will a prepayment charge be assessed if the Note Holder chooses to reduce my Principal balance by applying such excess amounts.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

0000610229

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Brian T. Peterson (Seal)
BRIAN T PETERSON -Borrower

Ginelle M. Peterson (Seal)
GINELLE M PETERSON -Borrower

____ (Seal)
-Borrower

[Sign Original Only]

0000610229

We hereby certify this to be a true and correct copy of the original.
By: _____
New Century Mortgage Corporation

ASSIGNMENT OF MORTGAGE

Loan Number: 0000610229

FOR VALUABLE CONSIDERATION, NEW CENTURY MORTGAGE CORPORATION

CALIFORNIA, a Corporation existing under the laws of _____, Assignor (whether one or more), hereby sells, assigns and transfers to

_____, Assignee
(whether one or more), the Assignor's interest in the Mortgage dated April 24, 2002 executed by

BRIAN T PETERSON AND GINELLE M PETERSON JOINT TENANTS

as Mortgagor, to
NEW CENTURY MORTGAGE CORPORATION

as Mortgagee, and filed for record _____, as Document Number
(or in Book _____ of _____ Page _____), in the Office of the (County Recorder)
(Registrar of Titles) of **SHERBURNE** 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

Two Hundred Twenty-Eight Thousand and No/100 -----

DOLLARS, with interest thereon from **May 1, 2002** _____, and that Assignor has good
right to sell, assign and transfer the same.

ASSIGNOR **NEW CENTURY MORTGAGE CORPORATION**

Prepared By:
NEW CENTURY MORTGAGE CORPORATION
18400 VON KARMAN, SUITE 1000
IRVINE, CA 92612

By _____
Magda Solorzano
Its **A.V.P. Shipping Manager**

By _____

Its

State of **CALIFORNIA**
County of **ORANGE**

This instrument was acknowledged before me on
by **Maria Stafford**

as

of

Maria Stafford

Minnesota Assignment of Mortgage
with Acknowledgment

MP-995W(MN) (9/11/02) 11/97
VMP MORTGAGE FORMS - (800)521-7291



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of ORANGE } ss.

On 5-8-02 before me, MARIA STAFFORD
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared MAGDA SOLORZANO
Names(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.
[Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

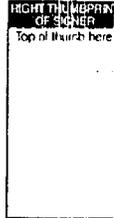
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

STATE OF MINNESOTA
COUNTY OF SHERBURNE

DISTRICT COURT
TENTH JUDICIAL DISTRICT

The Provident Bank,
Plaintiff,

Court File No. _____

vs.

NOTICE OF LIS PENDENS

Brian T. Peterson and Ginelle M.
Peterson, Northland Credit
Corporation, Tops Plus, John Doe
and Mary Rowe,

Defendants.

NOTICE IS HEREBY GIVEN that the above-entitled action has been commenced and the Complaint therein is now on file in the office of the District Court Administrator above-named; that the names of the parties to said action are as above-stated; that the real property affected, involved and brought in question by said action is the tract of land in the County of Sherburne, State of Minnesota, described as follows, to-wit:

That part of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 32, Township 34, Range 28, Sherburne County, Minnesota, described as follows:
Commencing at a point on the East line of said NW $\frac{1}{4}$ of Section 32, 1364.73 feet South of the Northeast corner thereof; thence deflect to the right in a Southwesterly direction 61 degrees 51 minutes, from said East line along the center line of Old County Road No. 4, a distance of 616.80 feet to the actual point of beginning of the land to be described; thence continue Southwesterly along said center line and the extension thereof 313.08 feet; thence Northwesterly at right angles 241.72 feet; thence Northeasterly parallel with said center line 313.08 feet; thence Southeasterly at right angles 241.72 feet to the point of beginning,

Exhibit B

Notice is further given that this action is brought for the purposes of:

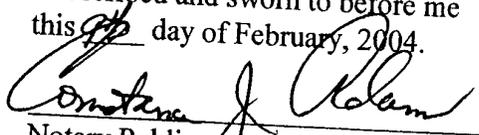
1. Declaring Plaintiff holder of a certain Mortgage dated April 24, 2002, covering property in the County of Sherburne, State of Minnesota, described as follows, to-wit:

That part of the SE ¼ of the NW ¼ of Section 32, Township 34, Range 28, Sherburne County, Minnesota, described as follows: Commencing at a point on the East line of said NW ¼ of Section 32, 1364.73 feet south of the Northeast corner thereof; thence deflect to the right in a Southwesterly direction 61 degrees 51 minutes, from said East line along the center line of Old County Road No. 4, a distance of 616.80 feet to the actual point of beginning of the land to be described; thence continue Southwesterly along said center line and the extension thereof 313.08 feet; thence Northwesterly at right angles 241.72 feet; thence Northeasterly parallel with said center line 313.08 feet; thence Southeastrly at right angles 241.72 feet to the point of beginning,

2. Directing that a copy of that Mortgage be accepted for recording by the Sherburne County Recorder; and
3. Foreclosing said Mortgage.

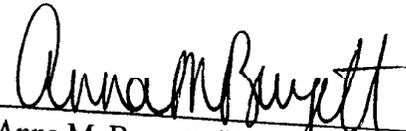
Dated: February 9, 2004

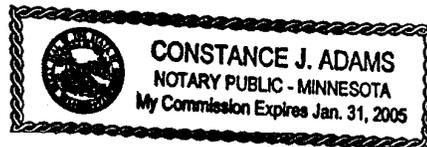
Subscribed and sworn to before me
this 9th day of February, 2004.


Notary Public

This instrument was drafted by:
WILFORD & GESKE
7560 Currell Boulevard, Suite 300
Woodbury, MN 55125
(651) 209-3300
Reference No. 070050-7006

WILFORD & GESKE

By: 
Anna M. Burgett, #0314353
Attorneys for Plaintiff
7560 Currell Boulevard, Suite 300
Woodbury, Minnesota 55125
(651) 209-3300



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

Case No. 04-42047 NCD
Chapter 13 Case

In Re:

Brian T. Peterson and
Ginelle M. Peterson,

MEMORANDUM

Debtors.

Provident Bank/PCFS Mortgage Resources (“Respondent”), by and through its undersigned attorney, hereby submits this Memorandum in support of Respondent’s objection to the proposed Modified Chapter 13 Plan filed by Brian T. Peterson and Ginelle M. Peterson (“Debtors”) in the above-captioned case. The facts relative to this matter are set forth in the Objection of Provident Bank to Confirmation of Chapter 13 Plan (“Objection”) and the Affidavit of William G. Selman III served and filed concurrently herewith.

DISCUSSION

Debtors have scheduled Respondent’s claim as a general unsecured claim, and Debtors’ Plan proposes to treat Respondent’s claim as a general unsecured claim. Under the proposed Plan, Respondent is, like other general unsecured creditors, to receive its pro rata share of \$48,959.20. For the reasons set forth below, Respondent contends that such treatment is improper under 11 U.S.C. Sec. 1322(a)(3) and that such treatment constitutes an improper modification under 11 U.S.C. Sec. 1322(b)(2). Accordingly, Respondent respectfully requests that this Court issue an Order denying confirmation of the proposed Plan.

As indicated in the Objection and in the Affidavit of William G. Selman III, Respondent has filed a proof of claim alleging a secured claim against the Debtors. Pursuant to Section 502(a) of the Bankruptcy Code, a filed claim is deemed allowed unless a party in interest objects to such claim, 11 U.S.C. Sec. 502(a), and, as of the date hereof, no objection has been filed to the claim filed by Respondent. Therefore, Debtors' Modified Chapter 13 Plan cannot be confirmed in that it does not provide for payment of Respondent's claim as a secured claim.

Respondent has alleged an interest in Debtors' real property by virtue of the note and mortgage Debtors' signed in 2002. However, by scheduling Respondent's claim as a general unsecured claim, and by treating Respondent's claim as a general unsecured creditor in the proposed Plan, Debtors are attempting to do away with Respondent's claimed interest. In effect, Debtors are attempting to use the strong arm provisions of the United States Bankruptcy Code to avoid Respondent's interest. However, given the pre-petition filing of the Notice of Lis Pendens, such an attempt cannot succeed.

While Section 544(a)(3) of the Code provides that a trustee may avoid any lien avoidable by a hypothetical bona fide purchaser of real property, 11 U.S.C. Sec. 544(a)(3), case law establishes that a trustee with constructive notice is precluded from using its avoidance powers. For instance, in In re Collins, 292 B.R. 842 (Bkrtcy S.D. Ohio 2003), the trustee argued that 11 U.S.C. Sec. 544(a)(3) allowed the bankruptcy estate to avoid a mortgage which did not meet the requirements of Ohio law. The bankruptcy court held that, even though the mortgage was defective, the trustee could not use the strong arm statute because of a lis pendens filed against the property prior to the bankruptcy filing. Id. at 849. Once the lis pendens was filed, no one, including the

trustee under Section 544(a)(3), could be considered a bona fide purchaser with rights over the holder of the mortgage. Id. (citing In re Periandri, 266 B.R. 651, 658 (6th Cir. BAP 2001)). As Colliers has stated:

However, the trustee's right as a bona fide purchaser does not override state recording statutes and permit avoidance of any interest of which a trustee would have had constructive notice under state law. This means a trustee generally can avoid an unrecorded transfer of land, but not after having been put on constructive notice or inquiry of a prior claim.

5 Collier on Bankruptcy, Para 544.08, 544-15 through 544-16 (15th ed. 2001).

In this case, Respondent filed a Notice of Lis Pendens with the Sherburne County Recorder. Under the Minnesota lis pendens statute, the sole function of lis pendens is to give constructive notice to subsequent purchasers and encumbrancers of the pendency of the action. Minn. Stat. Sec. 557.02; Chaney v. Minneapolis Community Development Agency, 641 N.W. 2d 328, 333 (Minn. App. 2002). Therefore, the Notice of Lis Pendens precludes the avoidance of Respondent's interest in the real property.

The Notice of Lis Pendens also impacts this case in other ways. For example, a person or entity who purchases real property from a party after a notice of lis pendens has been filed takes that property subject to the final disposition of the pending action and is bound by the decision which may be entered against the party from whom the purchaser derives title. Marr v. Bradley, 239 Minn. 503, 59 N.W. 2d 331, 335 (1953); Fingerhut Corp. v. Suburban National Bank, 460 N.W. 2d 63,67 (Minn. App. 1990). In other words, a subsequent purchaser or encumbrancer takes their interest subject to the notice and, ultimately, the decision in the underlying legal proceeding involving the property. The notice of lis pendens remains on the property after the bankruptcy filing (it cannot be avoided), and the Chapter 13 debtors hold the property subject to that notice.

Moreover, as admitted by the Debtors at the Meeting of Creditors, the parties intended for the creation of a purchase-money mortgage when the Debtors refinanced in 2002. In Minnesota, such liens are favored and take precedence over other interests in the property. See O'Halloran v. Marriage, 167 Minn. 443, 209 N.W. 271, 277 (1926); Marin v. Knox, 117 Minn. 428, 136 N.W. 15, 16 (1912). Therefore, Debtors cannot merely decide to ignore Respondent's interest without some sort of court determination.

CONCLUSION

For the reasons set forth above, Respondent respectfully request that this Court issue an Order denying Debtors' Modified Chapter 13 Plan.

Dated: June 30, 2004

/e/ William G. Selman III
William G. Selman III (#195716)
301 Fourth Ave. S., Suite 377
Minneapolis, MN 55415
Telephone: (612) 333-6000
Attorney for Provident Bank

DUNKLEY AND BENNETT, P.A.

Dated: June 30, 2004

/e/ T. Chris Stewart
T. Chris Stewart (#152316)
701 Fourth Ave. S., Suite 700
Minneapolis, MN 55415
Telephone: (612) 339-1290

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

Case No. 04-42047 NCD
Chapter 13 Case

In Re:

Brian T. Peterson and
Ginelle M. Peterson,

**ORDER DENYING CONFIRMATION
OF CHAPTER 13 PLAN**

Debtors.

This Chapter 13 case came on before the Court on July 8, 2004, for hearing on confirmation of Debtors' Modified Chapter 13 Plan. Appearances were as noted on the record. Upon the record made at the hearing, and the other files, records, and proceedings in the case,

IT IS HEREBY ORDERED:

That confirmation of Debtors' Modified Chapter 13 Plan is denied.

Date:

U.S. Bankruptcy Judge