

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CASE NO. 04-44516 RJK**

Paul C. Andrejzchick  
SSN XXX-XX-1437  
Sharon L. Andrejzchick  
SSN XXX-XX-5479

**CHAPTER 13 CASE**

Debtor.

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**NOTICE OF OBJECTION TO CONFIRMATION OF PLAN**

TO: Debtor and other entities specified in Local Rule 3015-3.

1. Rand Corporation (hereinafter "Secured Creditor") moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this objection at 10:30 a.m. on October 21, 2004, before the Honorable Robert J. Kressel in Courtroom 8 West at U.S. Courthouse, 300 South 4<sup>th</sup> Street, Minneapolis, Minnesota.

3. Any reply to this objection must be filed and delivered not later than 10:30 a.m. on October 20, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than October 18, 2004, which is three days before the time set for the hearing. **UNLESS A REPLY OPPOSING THE OBJECTION IS TIMELY FILED, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this objection pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed August 12, 2004. The case is now pending before this Court.

5. This objection arises under 11 U.S.C. § 1322 and Local Rule 3007-1.

6. Debtor is indebted to Secured Creditor in the principal amount of \$200,000.00, as evidenced by that certain Contract for Deed dated August 27, 2003, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a Contract for Deed on real estate in which Debtor has an interest as evidenced by that certain Contract for Deed dated August 27, 2003, executed by Paul C. Andrejzchick and Sharon L. Andrejzchick, recorded April 29, 2004, as Document No. 3953301, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A".

8. Said plan is objected to on the basis that it is not feasible and that Debtor will not be able to make all payments under the plan and to comply with the plan as contemplated by 11 U.S.C. § 1325 (a)(1), 11 U.S.C. § 1325 (a)(6) and 11 U.S.C. § 108 (b).

9. Said plan is also objected to on the basis that it is not consistent with the treatment of Secured Creditor. Paragraph 4 of the plan indicates that Debtor is not in default to Secured Creditor, however, paragraph 6 indicates that Debtor is in default to Secured Creditor. Debtor is in default pursuant to Notice of Cancellation of Contract for Deed served upon Debtor on June 14, 2004. Debtor is owing for the months of November, 2003 through October, 2004.

10. On or about June 9, 2004, Secured Creditor commenced Cancellation of Contract for Deed proceedings pursuant to Minnesota Statutes § 599.21. Debtor was served with a Notice of Cancellation of Contract for Deed on June 14, 2004 which provided Debtor with a sixty (60) day cure period. This case was filed on August 12, 2004. In In re Maanum, C.A. 8 (Minn.) 1987, 828F.2d 459, rehearing denied 838 F.2d 991, the Court held that the time period in which debtors could cure cancellation of contract for deed was not automatically stayed by filing of bankruptcy petition, but rather, was only temporarily stayed for 60 days; regardless of the type of property interest affected, the automatic stay provisions do not stay the mere running of statutory time period. The plan, as proposed by Debtor, attempts to exceed the statutory period in violation

of 11 U.S.C. 108 (b). Therefore, the plan does not comply with the provision of Chapter 13 of the Bankruptcy Code, as contemplated by 11 U.S.C. § 1325(a)(1) and (3).

11. The value of the property as scheduled by Debtor is \$280,000.00 subject to Secured Creditor's mortgage in excess of \$216,073.19.

12. The plan, as proposed, is not made in good faith by Debtor.

13. By expiration of the sixty (60) day period provided by 11 U.S.C. 108 (b), Secured Creditor is now the owner of the real property described in Exhibit "A" and is entitled to possession thereto.

14. Therefore, it is requested that the Court deny confirmation of Debtor's plan and order dismissal of this case.

Dated this 5th day of October, 2004.

**WILFORD & GESKE**

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

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

3953301

56-M-Contract For Deed

Minnesota Uniform Conveyancing Blanks (1978)

Miller/Davis Co. St. Paul, MN 551-642-1988

Corporation or Partnership Seller

W 11-26-03

No delinquent taxes and transfer entered; Certificate of Real Estate Value (X) filed ( ) not required.

2003 AND PRIOR TAXES PAID TAXPAYER SERVICES TRANSFERRED

NOV 24 2003 (Year)

County Auditor

by [Signature] DEPUTY Deputy

134 50 BY [Signature] DEPUTY REGISTRAR OF TITLES APR 29 2004 OFFICE OF THE REGISTRAR OF TITLES HENNEPIN COUNTY, MINNESOTA CERTIFIED FILED ON 3953301 1128457 June 2

MORTGAGE REGISTRY TAX DUE HEREON:

\$

Date: AUGUST 27, 2003

(reserved for mortgage registry tax payment)

Box 160 Title Recording Services

THIS CONTRACT FOR DEED is made on the above date by RAND CORPORATION

a CORPORATION under the laws of MINNESOTA

Seller, and PAUL C. ANDREJZCHICK AND SHARON L. ANDREJZCHICK

Purchaser (whether one or more). Seller and Purchaser agree to the following terms:

- 1. PROPERTY DESCRIPTION. Seller hereby sells, and Purchaser hereby buys, real property in HENNEPIN County, Minnesota, described as follows: LOT 11, BLOCK 3, WOODLAND HILLS 4TH ADDITION, HENNEPIN COUNTY, MINNESOTA

32-117-22-14-0021 TPO

Title Recording Services, Inc. 397634 1043 Grand Avenue #259 h2483981 St. Paul, MN 55105 HENNEPIN T HOME BASIC CD

"The Seller certifies that the Seller does not know of any wells on the described property."

together with all hereditaments and appurtenances belonging thereto (the Property).

- 2. TITLE. Seller warrants that title to the Property is, on the date of this contract, subject only to the following exceptions: (a) Covenants, conditions, restrictions, declarations and easements of record, if any; (b) Reservations of minerals or mineral rights by the State of Minnesota, if any; (c) Building, zoning and subdivision laws and regulations; (d) The lien of real estate taxes and installments of special assessments which are payable by Purchaser pursuant to paragraph 6 of this contract; and (e) The following liens or encumbrances: SECURITY AGREEMENT IN FAVOR OF STEARNS BANK
- 3. DELIVERY OF DEED AND EVIDENCE OF TITLE. Upon Purchaser's prompt and full performance of this contract, Seller shall: (a) Execute, acknowledge and deliver to Purchaser a MARKETABLE Deed, in recordable form, conveying marketable title to the Property to Purchaser, subject only to the following exceptions: (i) Those exceptions referred to in paragraph 2(a), (b), (c) and (d) of this contract; (ii) Liens, encumbrances, adverse claims or other matters which Purchaser has created, suffered or permitted to accrue after the date of this contract; and

## (iii) The following liens or encumbrances:

(b) Deliver to Purchaser the abstract of title to the Property or, if the title is registered, the owner's duplicate certificate of title.

4. PURCHASE PRICE. Purchaser shall pay to Seller, at 1433 UTICA AVE SOUTH #255 ST LOUIS PARK MN 55416

the sum of TWO HUNDRED THOUSAND AND NO./100'S (\$ \$200,000.00 ) as and for the purchase price for the Property, payable as follows: INTEREST, TAXES AND INSURANCE. PAYMENTS BEGINNING OCTOBER 1, 2003. THE FINAL PAYMENT WILL BE A BALLOON PAYMENT DUE ON DECEMBER 1, 2004. THE MONTHLY INTEREST PAYMENT WILL BE \$1466.87.

PURCHASER WILL MAKE MONTHLY PAYMENTS ON THE FIRST DAY OF EACH MONTH BEGINNING OCTOBER 1, 2003. IF THE SELLER HAS NOT RECEIVED THE FULL AMOUNT OF ANY MONTHLY PAYMENT BY THE END OF THE TEN CALENDAR DAYS AFTER THE DATE IT IS DUE. THE PURCHASER WILL PAY A LATE CHARGE TO THE SELLER. THE AMOUNT OF THE CHARGE WILL BE 5% OF THE OVERDUE PAYMENT.

5. PREPAYMENT. Unless otherwise provided in this contract, Purchaser shall have the right to fully or partially prepay this contract at any time without penalty. Any partial prepayment shall be applied first to payment of amounts then due under this contract, including unpaid accrued interest, and the balance shall be applied to the principal installments to be paid in the inverse order of their maturity. Partial prepayment shall not postpone the due date of the installments to be paid pursuant to this contract or change the amount of such installments.

6. REAL ESTATE TAXES AND ASSESSMENTS. Purchaser shall pay, before penalty accrues, all real estate taxes and installments of special assessments assessed against the Property which are due and payable in the year 2003 and in all subsequent years. Real estate taxes and installments of special assessments which are due and payable in the year in which this contract is dated shall be paid as follows: YOUR TAXES WILL BE COLLECTED WITH YOUR MONTHLY PAYMENT BASES ON 1/12 OF THE ANNUAL AMOUNT, AND WILL BE PAID WHEN DUE, PROVIDING SUFFICIENT FUNDS ARE IN THE ESCROW ACCOUNT. ANY INCREASE IN THE ANNUAL TAXES WILL CAUSE YOUR PAYMENT TO INCREASE. ANY SHORTAGE IN THE ESCROW WILL BE ADDED TO YOUR BALLOON PAYMENT.

Seller warrants that the real estate taxes and installments of special assessments which were due and payable in the years preceding the year in which this contract is dated are paid in full.

## 7. PROPERTY INSURANCE.

(a) INSURED RISKS AND AMOUNT. Purchaser shall keep all buildings, improvements and fixtures now or later located on or a part of the Property insured against loss by fire, extended coverage perils, vandalism, malicious mischief and, if applicable, steam boiler explosion for at least the amount of \$200,000.00. If any of the buildings, improvements or fixtures are located in a federally designated flood prone area, and if flood insurance is available for that area, Purchaser shall procure and maintain flood insurance in amounts reasonably satisfactory to Seller.

(b) OTHER TERMS. The insurance policy shall contain a loss payable clause in favor of Seller which provides that Seller's right to recover under the insurance shall not be impaired by any acts or omissions of Purchaser or Seller, and that Seller shall otherwise be afforded all rights and privileges customarily provided a mortgagee under the so-called standard mortgage clause.

(c) NOTICE OF DAMAGE. In the event of damage to the Property by fire or other casualty, Purchaser shall promptly give notice of such damage to Seller and the insurance company.

## 8. DAMAGE TO THE PROPERTY

(a) APPLICATION OF INSURANCE PROCEEDS. If the Property is damaged by fire or other casualty, the insurance proceeds paid on account of such damage shall be applied to payment of the amounts payable by Purchaser under this contract, even if such amounts are not then due to be paid, unless Purchaser makes a permitted election described in the next paragraph. Such amounts shall be first applied to unpaid accrued interest and next to the installments to be paid as provided in this contract in the inverse order of their maturity. Such payment shall not postpone the due date of the installments to be paid pursuant to this contract or change the amount of such installments. The balance of insurance proceeds, if any, shall be the property of Purchaser.



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**TRANSFER RESTRICTIONS: PURCHASER SHALL NOT SELL, ASSIGN OR OTHERWISE TRANSFER PURCHASER'S INTEREST IN THIS CONTRACT, OR THE PROPERTY, OR ANY PART THEREOF WITHOUT THE WRITTEN CONSENT OF SELLER WHICH CONSENT SHALL BE GRANTED OR WITHHELD IS THE SOLE DISCRETION OF THE SELLER.**

**ESCROWS: IN ADDITION TO THE MONTHLY PAYMENT OF INTEREST, PURCHASER SHALL DEPOSIT WITH SELLER, WITH EACH PAYMENT, AN AMOUNT REPRESENTING ONE-TWELFTH (1/12) OF THE ANNUAL REAL ESTATE TAXES, INSTALLMENTS OF SPECIAL ASSESSMENTS AND INSURANCE PREMIUMS WITH RESPECT TO THE PROPERTY (OR SUCH OTHER AMOUNTS AS SELLER IS REQUIRED TO DEPOSIT UNDER ANY UNDERLYING ENCUMBRANCE ON THE PROPERTY.) THE AMOUNT OF SUCH TAXES, SPECIAL ASSESSMENTS AND INSURANCE PREMIUMS, WHEN UNKNOWN, SHALL BE ESTIMATED BY SELLER. SUCH DEPOSIT SHALL BE USED BY SELLER TO PAY REAL ESTATE TAXES, INSTALLMENTS OF SPECIAL ASSESSMENTS AND INSURANCE PREMIUMS WITH RESPECT TO THE PROPERTY WHEN DUE, PURCHASER SHALL PAY THE DEFICIENCY TO SELLER UPON WRITTEN DEMAND. \$885.00 HAS BEEN FUNDED THROUGH THIS CONTRACT FOR DEED AS THE INITIAL DEPOSIT INTO YOUR ESCROW ACCOUNT.**

**THIS CONTRACT FOR DEED WILL BE ASSIGNED TO RAND FINANCIAL SERVICES INC. PAYMENTS WILL BE MADE AT 1433 UTICA AVE SOUTH #265 ST LOUIS PARK MN 55416.**

**THIS EXTENSION OF CREDIT IS MADE UNDER MN STAT SEC 47.204**

- 18. HEADINGS. Headings of the paragraphs of this contract are for convenience only and do not define, limit or construe the contents of such paragraphs.
- 19. ASSESSMENTS BY OWNERS' ASSOCIATION. If the Property is subject to a recorded declaration providing for assessments to be levied against the Property by any owners' association, which assessments may become a lien against the Property if not paid, then:
  - (a) Purchaser shall promptly pay, when due, all assessments imposed by the owners' association or other governing body as required by the provisions of the declaration or other related documents; and
  - (b) So long as the owners' association maintains a master or blanket policy of insurance against fire, extended coverage perils and such other hazards and in such amounts as are required by this contract, then:
    - (i) Purchaser's obligation in this contract to maintain hazard insurance coverage on the Property is satisfied; and
    - (ii) The provisions in paragraph 8 of this contract regarding application of insurance proceeds shall be superseded by the provisions of the declaration or other related documents; and
    - (iii) In the event of a distribution of insurance proceeds in lieu of restoration or repair following an insured casualty loss to the Property, any such proceeds payable to Purchaser are hereby assigned and shall be paid to Seller for application to the sum secured by this contract, with the excess, if any, paid to Purchaser.
- 20. ADDITIONAL TERMS:

**SELLER**

**RAND CORPORATION**

*Albert Miller*

By **ALBERT MILLER**

Its **PRESIDENT**

By \_\_\_\_\_

Its \_\_\_\_\_

**STATE OF MINNESOTA**

**COUNTY OF HENNEPIN** } ss.

This instrument was acknowledged before me this \_\_\_\_\_

**AUGUST 27, 2003**

(Date)

by **ALBERT MILLER**   
the **PRESIDENT**   
of **RAND CORPORATION**

a **CORPORATION** under the laws of **MINNESOTA**  
on behalf of the **CORPORATION**

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK):



*Judi K. Lawrence*

SIGNATURE OF NOTARY PUBLIC OR OTHER OFFICIAL

**STATE OF MINNESOTA**

**COUNTY OF HENNEPIN** } ss.

This instrument was acknowledged before me on \_\_\_\_\_

**AUGUST 27, 2003**

Date

by **PAUL C. AND SHARON L. ANDREJZCHICK**

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK):



*Judi K. Lawrence*

SIGNATURE OF NOTARY PUBLIC OR OTHER OFFICIAL

Tax Statements for the real property described in this instrument should be sent to (include name and address of Grantee):

**ANDREJZCHICK**  
**C/O RAND CORPORATION**  
**1433 UTICA AVE SOUTH #265**  
**ST LOUIS PARK MN 55416**

THIS INSTRUMENT WAS DRAFTED BY (NAME AND ADDRESS):

**RAND CORPORATION**  
**1433 UTICA AVE SOUTH #265**  
**ST LOUIS PARK MN 55416**

**FAILURE TO RECORD OR FILE THIS CONTRACT FOR DEED MAY GIVE OTHER PARTIES PRIORITY OVER PURCHASERS' INTEREST IN THE PROPERTY.**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 13 CASE**

Paul C. Andrejzchick  
SSN XXX-XX-1437  
Sharon L. Andrejzchick  
SSN XXX-XX-5479

**CASE NO. 04-44516 RJK**

Debtor.

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on October 5, 2004, I served the annexed Notice of Objection to Confirmation of Plan and proposed Order Denying Confirmation of Plan to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Paul C. Andrejzchick  
Sharon L. Andrejzchick  
16210 Woodland Lane  
Minnetonka, MN 55345

Jasmine Z. Keller  
12 South 6th Street, Suite 310  
Minneapolis, MN 55402

Barbara J. May  
4105 N Lexington Ste 310  
Arden Hills, MN 55126

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

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

Dated this 5th day of October, 2004.

/e/ Diana Waletzko  
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**ORDER DENYING CONFIRMATION  
OF PLAN AND DISMISSAL OF CASE**

Paul C. Andrejzchick  
SSN XXX-XX-1437  
Sharon L. Andrejzchick  
SSN XXX-XX-5479

Debtor.

**CASE NO. 04-44516 RJK**

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This Chapter 13 Case came on before the Court on October 21, 2004, for hearing on Debtor's plan of debt adjustment. Appearances were as noted in the record. Upon the record made at hearing, and all other files and records in this case,

IT IS HEREBY ORDERED that confirmation of Debtor's plan of debt adjustment, as filed August 12, 2004, is denied and this case is dismissed.

Dated: \_\_\_\_\_  
Judge of Bankruptcy Court