

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:)
) Case No. BKY 04-45103
MICHAEL E. LOWERS and)
RHONDA L. LOWERS,) Chapter 13
a/k/a Rhonda L. Landborg,)
)
Debtors.)

OBJECTIONS OF THE UNITED STATES
OF AMERICA - UNITED STATES DEPARTMENT OF
AGRICULTURE (RURAL DEVELOPMENT) TO CONFIRMATION
OF THE DEBTORS' CHAPTER 13 PLAN OF REORGANIZATION

Now comes the United States of America, on behalf of its agency, the United States Department of Agriculture - Rural Development, formerly known as Rural Housing Service, (hereinafter "RD"), by and through its attorneys, Thomas B. Heffelfinger, United States Attorney for the District of Minnesota and Roylene A. Champeaux, Assistant United States Attorney, and hereby objects to confirmation of the debtors' Chapter 13 Plan of Reorganization as follows:

1. The Chapter 13 confirmation hearing is scheduled for November 4, 2004, at 10:30 a.m. at U.S. Bankruptcy Court, U.S. Courthouse, Courtroom 7 West, 300 South Fourth Street, Minneapolis, Minnesota 55415.

2. The Court has jurisdiction over these objections pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This is a core proceeding. This case was filed under

Chapter 13 on September 13, 2004. This case is now pending in this Court.

3. These objections arise under 11 U.S.C. §§ 1322(b)(5), and Bankruptcy Rule 3015. These objections are filed under Bankruptcy Rule 9014 and Local Rules 3015-3, and 3020-1. The United States objects to confirmation of the debtors' Chapter 13 Plan of Reorganization.

4. The RD maintains a mortgage on the debtors' homestead and was owed the sum of \$102,667.55 as of the date of bankruptcy filing. There is a payment default on this mortgage in the amount of \$17,068.55 as of the date of filing. See a copy of the Rural Development Proof of Claim filed October 18, 2004 attached hereto as Exhibit A.

5. The plan provides that the debtors will cure the RD payment default of \$15,231.00 over approximately 27 months.

6. The RD objects to this treatment of the RD home mortgage default on the bases that the Plan fails to comply with 11 U.S.C. § 1322(b)(5) in that the Plan does not provide for the payment of the full RD mortgage default and does not provide for a cure of that default within a fourteen month period. All of the real estate covered by the RD mortgage is homestead real estate. The RD real estate debt is not cross-secured.

7. A separate memorandum of law is attached.

WHEREFORE, the United States of America, on behalf of its agency, the United States Department of Agriculture - Rural Development, by and through the undersigned attorneys, moves the Court for an order denying confirmation of the debtors' Chapter 13 Plan of Reorganization, and for such other relief as may be just and equitable.

Date: October 25, 2004

THOMAS B. HEFFELFINGER
United States Attorney

/e/ Roylene A. Champeaux
By: ROYLENE A CHAMPEAUX
Assistant United States Attorney
Attorney ID Number 154805
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5685

Attorneys for the USDA -
Rural Development

VERIFICATION

I, Maxine Washington, Bankruptcy Processor for the United States Department of Agriculture - Rural Housing Service, Centralized Servicing Center, the movant named in the foregoing Chapter 13 Bankruptcy for Rhonda L. Landborg as stated on the Petition, Bankruptcy No. 04-45103____, declares under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

DATED: October 22, 2004

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Maxine Washington
Bankruptcy Processor

UNITED STATES BANKRUPTCY COURT
District of **Minnesota**
MINNEAPOLIS

PROOF OF CLAIM

In re (Name of Debtor)
RHONDA E. LOWERS

Case Number
04-45103

OCT 19 2004

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor:
(The person or other entity to whom the debtor owes money or property)
USDA RURAL HOUSING SERVICE

Name and Address Where Notices Should be Sent:
Centralized Servicing Center, USDA
P.O. Box 66879
St. Louis, MO 63166

Telephone No. **1-800-793-8861**

Account or Other Number by Which Creditor Identifies Debtor
0015298767 0015298039

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.
 Check box if you have never received any notices from the bankruptcy court in this case.
 Check box if the address differs from the address on the envelope sent to you by the court.

2

THIS SPACE IS FOR COURT USE ONLY

Check here if this claim replaces amends a previously filed claim, dated: _____

1. BASIS FOR CLAIM:

Goods sold
 Services performed
 Money loaned
 Personal injury / wrongful death
 Taxes
 Other (Describe briefly)

Retiree benefits as defined in 11 U.S.C. § 1114(a)
 Wages, salaries, and compensation (Fill out below)
Your social security number _____
Unpaid compensation for services performed from _____ to _____ (date) (date)

2. DATE DEBT WAS INCURRED:
12/10/99 12/10/99

3. IF COURT JUDGMENT, DATE OBTAINED:

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.

SECURED CLAIM \$ 102667.55
Attach evidence of perfection of security interest
Brief Description of Collateral:
 Real Estate Motor Vehicle Other (Describe briefly)
** This loan may be subject to subsidy recapture.
Amount of arrearage and other charges at time case filed included in secured claim above, if any \$ 17068.28

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.

UNSECURED PRIORITY CLAIM \$ _____
Specify the priority of the claim.
 Wages, salaries, or commissions (up to \$2000), 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)
 Contributions to an employee benefit plan-11 U.S.C. § 507 (a)(4)
 Up to \$900 of deposits toward purchase, lease, or rental of property or services for personal, family or household use-11 U.S.C. § (507)(a)(6)
 Taxes or penalties of governmental units-11 U.S.C. § 507 (a)(7)
 Other -Specify applicable paragraph of 11 U.S.C. § 507(a) _____

5. TOTAL AMOUNT OF CLAIM AT TIME CASE FILED: \$ _____ (Unsecured) \$ 102667.55 (Secured) \$ _____ (Priority) \$ 102667.55 (Total)

Check this box if claim included charges in addition to the principal amount of the claim. Attach itemized statements of all additional charges.

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.

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 interest. If the documents are not available, explain. If the documents are voluminous, attach a summary.

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.

THIS SPACE IS FOR COURT USE ONLY

Date **10/13/04**

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)
[Signature]
BANKRUPTCY PROCESSOR

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

EXHIBIT
A.

ARREARAGE STATEMENT

DEBTORS(S) Rhonda E. Lowers (Landborg)
CASE NUMBER 04-45103
CREDITOR NAME USDA, RURAL HOUSING SERVICE P.O. Box 790170 St. Louis, MO 63179
ACCT NUMBER: 15298767 15298039

PAY OFF BALANCE: (AS OF 09/13/2004 \$102,667.55

<u>5</u>	payment(s)	for	<u>10/10/2002</u>	through	<u>03/10/2003</u>	of	<u>\$511.68</u>	each	Totaling	<u>\$2,558.40</u>
<u>18</u>	payment(s)	for	<u>03/10/2003</u>	through	<u>09/10/2004</u>	of	<u>\$583.16</u>	each	Totaling	<u>\$10,496.88</u>
<u>5</u>	payment(s)	for	<u>10/10/2002</u>	through	<u>03/10/2003</u>	of	<u>\$148.66</u>	each	Totaling	<u>\$743.30</u>
<u>18</u>	payment(s)	for	<u>03/10/2003</u>	through	<u>09/10/2004</u>	of	<u>\$181.65</u>	each	Totaling	<u>\$3,269.70</u>
<u>0</u>	payment(s)	for		through		of	<u>\$0.00</u>	each	Totaling	<u>\$0.00</u>
<u>0</u>	payment(s)	for		through		of	<u>\$0.00</u>	each	Totaling	<u>\$0.00</u>
<u>0</u>	payment(s)	for		through		of	<u>\$0.00</u>	each	Totaling	<u>\$0.00</u>
<u>0</u>	payment(s)	for		through		of	<u>\$0.00</u>	each	Totaling	<u>\$0.00</u>
									Credit	<u>\$0.00</u>

SUB-TOTAL \$17,068.28

CHARGES:

ESCROW ADVANCES (TAXES AND INSURANCE)	<u>\$ -</u>
RETURNED CHECK FEES:	<u>\$ -</u>
FORECLOSURE FEES AND COSTS:	<u>\$ -</u>
OTHER: uncollected late charges	<u>\$ -</u>
TOTAL ARREARAGE THROUGH	<u>\$17,068.28</u>

Interst rate on Mortgage | 7.250%
Monthly payment due each month (excluding Late ch charges) **\$ 764.81**

COMPLETED BY: Maxine Washington
PHONE: 1-800-349-5097, EXT 2216
Direct: 314-206-2216
Fax: 314-206-2276 or 2274
Email: mw282@stl.rural.usda.gov

Trustee:

Jasmine Z. Keller

Date Prepared: 10/13/2004

#15298767

(Space Above This Line For Recording Data)

Form RD 3550-14 MN
(11-96)

Form Approved
OMB No. 0575-0172

United States Department of Agriculture
Rural Housing Service

MORTGAGE FOR MINNESOTA

THIS MORTGAGE ("Security Instrument") is made on December 10, 1999 (Date)
The mortgagor is Rhonda Landborg, single ("Borrower").

This Security Instrument is given to the United States of America acting through the Rural Housing Service or successor agency, United States Department of Agriculture ("Lender"), whose address is Rural Housing Service, c/o Centralized Servicing Center, United States Department of Agriculture, P.O. Box 66889, St. Louis, Missouri 63166.

Borrower is indebted to Lender under the following promissory notes and/or assumption agreements (herein collectively called "Note") which have been executed or assumed by Borrower and which provide for monthly payments, with the full debt, if not paid earlier, due and payable on the maturity date: December 10, 2032

Date of Instrument	Principal Amount	Maturity Date
December 10, 1999	\$59157.38	December 10, 2032
December 10, 1999	\$27297.62	December 10, 2023

This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the property covered by this Security Instrument; (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note, and (d) the recapture of any payment assistance and subsidy which may be granted to the Borrower by the Lender pursuant to 42 U.S.C. §§ 1472(g) or 1490a. For this purpose, Borrower does hereby mortgage, grant, and convey to Lender the following described property located in the County of Anoka, State of Minnesota:

Lot 4, Block 1, Durigan & Locher 3rd Addition, Anoka County, Minnesota.

which has the address of 23238 Yucca Street NW

St. Francis
(City)

Minnesota: 55070
(ZIP)

(Street)
("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures which now or hereafter are 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 seised of the estate hereby conveyed and has the right to 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 and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; and (d) yearly flood insurance premiums, if any. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. § 2601 *et seq.* ("RESPA"), unless another law or federal regulation that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may 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 by a federal agency (including Lender) or in an institution whose deposits are insured by a federal agency, instrumentality, or entity. Lender shall apply the Funds to pay the Escrow Items. Lender may 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. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may 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, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If Lender shall acquire or sell the Property after acceleration under paragraph 22, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

3. **Application of Payments.** Unless applicable law or Lender's regulations provide otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied in the following order of priority: (1) to advances for the preservation or protection of the Property or enforcement of this lien; (2) to accrued interest due under the Note; (3) to principal due under the Note; (4) to amounts required for the escrow items under paragraph 2; (5) to late charges and other fees and charges.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Lender has agreed in writing to such lien or Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within ten (10) days of the giving of notice.

Borrower shall pay to Lender such fees and other charges as may now or hereafter be required by regulations of Lender, and pay or reimburse Lender for all of Lender's fees, costs, and expenses in connection with any full or partial release or subordination of this instrument or any other transaction affecting the property.

5. Hazard or 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 floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurer providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, at Lender's option Lender may obtain coverage to protect Lender's rights in the Property pursuant to paragraph 7.

All insurance policies and renewals shall be in a form acceptable to Lender and shall include a standard mortgagee clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within thirty (30) days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The thirty (30) day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If after acceleration the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. Preservation, Maintenance, and Protection of the Property; Borrower's Loan Application; Leaseholds.

Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall maintain the improvements in good repair and make repairs required by Lender. Borrower shall comply with all laws, ordinances, and regulations affecting the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note. 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.

7. Protection of Lender's Rights in the Property. If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender is not required to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

8. Refinancing. If at any time it shall appear to Lender that Borrower may be able to obtain a loan from a responsible cooperative or private credit source, at reasonable rates and terms for loans for similar purposes, Borrower will, upon the Lender's request, apply for and accept such loan in sufficient amount to pay the note and any indebtedness secured hereby in full.

9. Inspection. Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

- 10. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured hereby immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the 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 condempnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within thirty (30) days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.
- 11. 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 and any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.
- 12. Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.
- 13. Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.
- 14. Governing Law; Severability.** This Security Instrument shall be governed by federal law. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable. This instrument shall be subject to the present regulations of Lender, and to its future regulations not inconsistent with the express provisions hereof. All powers and agencies granted in this instrument are coupled with an interest and are irrevocable by death or otherwise; and the rights and remedies provided in this instrument are cumulative to remedies provided by law.
- 15. Borrower's Copy.** Borrower acknowledges receipt of one conformed copy of the Note and of this Security Instrument.
- 16. Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is leased for a term greater than three (3) years, leased with an option to purchase, sold, or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument.
- 17. Nondiscrimination.** If Borrower intends to sell or rent the Property or any part of it and has obtained Lender's consent to do so (a) neither Borrower nor anyone authorized to act for Borrower, will refuse to negotiate for the sale or rental of the Property or will otherwise make unavailable or deny the Property to anyone because of race, color, religion, sex, national origin, handicap, age, or familial status, and (b) Borrower recognizes as illegal and hereby disclaims and will not comply with or attempt to enforce any restrictive covenants on dwelling relating to race, color, religion, sex, national origin, handicap, age or familial status.
- 18. Sale of Note; Change of Loan Servicer.** The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There also may 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 in accordance with paragraph 13 above and applicable law. The notice will state the name

and address of the new Loan Servicer and the address to which payments should be made.

19. **Uniform Federal Non-Judicial Foreclosure.** If a uniform federal non-judicial foreclosure law applicable to foreclosure of this security instrument is enacted, Lender shall have the option to foreclose this instrument in accordance with such federal procedure.

20. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any hazardous substances on or in the Property. The preceding sentence shall not apply to the presence, use, or storage on the Property of small quantities of hazardous substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any federal, state, or local environmental law or regulation.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any hazardous substance or environmental law or regulation of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any hazardous substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with applicable environmental law and regulations.

As used in this paragraph "hazardous substances" are those substances defined as toxic or hazardous substances by environmental law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph, "environmental law" means federal laws and regulations and laws and regulations of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

21. **Cross Collateralization.** Default hereunder shall constitute default under any other real estate security instrument held by Lender and executed or assumed by Borrower, and default under any other such security instrument shall constitute default hereunder.

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

22. **SHOULD DEFAULT** occur in the performance or discharge of any obligation in this instrument or secured by this instrument, or should the parties named as Borrower die or be declared incompetent, or should any one of the parties named as Borrower be declared a bankrupt or an insolvent or make an assignment for the benefit of creditors, Lender, at its option, with or without notice, may: (a) declare the entire amount unpaid under the note and any indebtedness to Lender hereby secured immediately due and payable, (b) for the account of Borrower incur and pay reasonable expenses for repair or maintenance of and take possession of, operate or rent the property, (c) upon application by it and production of this instrument, without other evidence and without notice of hearing of said application, have a receiver appointed for the property, with the usual powers of receivers in like cases, (d) foreclose this instrument as provided herein or by State law, and (e) enforce any and all other rights and remedies provided herein or by present or future law.

23. The proceeds of foreclosure sale shall be applied in the following order to the payment of: (a) costs and expenses incident to enforcing or complying with the provisions hereof, (b) any prior liens required by law or a competent court to be so paid, (c) the debt evidenced by the note and all indebtedness to Lender secured hereby, (d) inferior liens of record required by law or a competent court to be so paid, (e) at Lender's option, any other indebtedness of Borrower owing to Lender, and (f) any balance to Borrower. At foreclosure or other sale of all or any part of the property, Lender and its agents may bid and purchase as a stranger and may pay Lender's share of the purchase price by crediting such amount on any debts of Borrower owing to Lender, in the order prescribed above.

24. Borrower agrees that Lender will not be bound by any present or future State laws prescribing any statute of limitations or limiting the conditions which Lender may by regulation impose, including the interest rate it may charge, as a condition of approving a transfer of the property to a new Borrower. Borrower expressly waives the benefit of any such State laws. Borrower hereby waives, to the fullest extent Borrower may lawfully do so under State law the benefit of all State Laws (a) providing for valuation, appraisal, homestead or exemption of the property, (b) prohibiting maintenance of an action for a deficiency judgment or limiting the amount thereof or the time within which such action may be brought, or (c) allowing any right of redemption or possession following any foreclosure sale. Borrower also hereby relinquishes, waives and conveys all rights, inchoate or consummate, of descent, dower, curtesy, and homestead.

25. At the option of Lender this mortgage may be foreclosed by action, or by advertisement as provided by statute, including State statutes, or rules of practice relating thereto, and Borrower hereby irrevocably vests in Lender the statutory power of sale and constitutes and appoints Lender Borrower's agent and attorney in fact to sell the property, after due notice at public auction to the highest bidder, for cash or secured credit at the option of Lender, and to give the purchaser a warranty deed binding upon Borrower and all claiming under Borrower. If this mortgage covers noncontiguous tracts, it shall be the option of Lender be considered to be a single tract or farm.

26. **Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box]

Condominium Rider Planned Unit Development Rider Other(s) (specify)

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to the Borrower as requested by Borrower and approved by the Government. Approval of the Government is mandatory provided the advance is requested for a purpose authorized by the Government. Interest shall accrue on the amount of each advance from its actual date as shown on the reverse hereof. Borrower authorizes the Government to enter the amount and date of such advance in the Record of Advances.

Every payment made on any indebtedness evidenced by this note shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations (7 CFR §1951.8) of the Farmers Home Administration according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this note and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

Borrower agrees that the Government at any time may assign this note and insure the payment thereof, and in such case, though the note is not held by the Government, Borrower shall continue to pay to the Government, as collection agent for the holder, all installments of principal and interest as scheduled herein.

If this note is held by an insured lender, prepayments made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower, and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Borrower hereby certifies that he is unable to obtain sufficient credit elsewhere to finance his actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near his community for loans for similar purposes and periods of time, and that the loan evidenced hereby shall be used solely for purposes authorized by the Government.

Property constructed, improved, purchased, or refinanced in whole or in part with the loan evidenced hereby shall not be leased, assigned, sold, transferred, or encumbered, voluntarily or otherwise, without the written consent of the Government. Unless the Government consents otherwise in writing, Borrower (a) will personally operate such property as a farm with his own and his family's labor if this is an FO loan, or (b) will personally occupy and use such property if this is an RH loan on a "nonfarm tract" or a section 504 RH loan.

REFINANCING AGREEMENT: If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept a loan in sufficient amount to pay this note in full and, if the lender is a cooperative, to pay for any necessary stock. This paragraph and the preceding paragraph shall not apply to any comaker signing this note pursuant to Section 502 of the Housing Act of 1949 to compensate for deficient repayment ability of other undersigned person(s).

DEFAULT: Failure to pay when due any debt evidenced hereby or perform any covenant or agreement hereunder shall constitute default under any other instrument evidencing a debt of Borrower owing to, insured or Guaranteed by the Government or securing or otherwise relating to such a debt; and default under any such other instrument shall constitute default hereunder. **UPON ANY SUCH DEFAULT,** the Government at its option may declare all or any part of any such indebtedness immediately due and payable.

This Note is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farm and Rural Development Act or Title V of the Housing Act of 1949 and for the type of loan as is indicated in the "KIND OF LOAN" block above. This Note shall be subject to the present regulations of the Farmers Home Administration and to its future regulations not inconsistent with the express provisions hereof.

Presentment, protest, and notice are hereby waived.

Robert J. Doer (SEAL)
Robert J. Doer (BORROWER)

Lori L. Berens (SEAL)
Lori L. Berens (Co-Borrower)

23238 Yucca Street, N.W.

St. Francis, MN 55070

RECORD OF ADVANCES					
AMOUNT	DATE	AMOUNT	DATE	AMOUNT	DATE
(1) \$ 13,100.00	3/8/88	(8) \$		(15) \$	
(2) \$ @%		(9) \$		(16) \$	
(3) \$ 25,000.00	4-4-88	(10) \$		(17) \$	
(4) \$ 16,900.00	4-27-88	(11) \$		(18) \$	
(5) \$		(12) \$		(19) \$	
(6) \$		(13) \$		(20) \$	
(7) \$		(14) \$		(21) \$	
				TOTAL \$	55,000.00



**United States
Department of
Agriculture**

Rural Housing Service
Centralized Servicing Center
P. O. Box 66879
St. Louis, MO 63166

10/13/04

U.S. BANKRUPTCY COURT MN4
ATTN: CLERK OF THE COURT
U. S. COURTHOUSE
300 S 4TH ST #301
MINNEAPOLIS MN 55415-1329

SUBJECT: Chapter 13
Case No. 04-45103
RHONDA E. LOWERS

Dear Sir/Madam:

Attached please find an original and 2 copies of the Proof of Claim for filing on behalf of the Rural Housing Service. Please forward a returned copy of the filed Proof of Claim to the following address for distribution:

United States Department of Agriculture
Centralized Servicing Center
PO Box 66879
St. Louis, MO 63166

We are a Federal Agency; therefore, we are exempt from filing fees. Thank you for your assistance in this matter. If you have any questions, please feel free to contact us at 1-800-349-5097.

Sincerely,

Bankruptcy Processor

Attachments



USDA is an Equal Opportunity Lender, Provider, and Employer. Complaints of discrimination should be sent to: USDA, Director, Office of Civil Rights, Washington, DC 20250-9410

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:)
) Case No. BKY 04-45103
MICHAEL E. LOWERS and)
RHONDA L. LOWERS,) Chapter 13
a/k/a Rhonda L. Landborg,)
)
Debtors.)

MEMORANDUM IN SUPPORT OF
OBJECTIONS OF THE UNITED STATES
OF AMERICA - UNITED STATES DEPARTMENT
OF AGRICULTURE (RURAL DEVELOPMENT) TO THE
CONFIRMATION OF DEBTORS' CHAPTER 13 PLAN OF REORGANIZATION

FACTS

The facts are as set forth in the verified objections which accompany this Memorandum.

ARGUMENT

- A. **THE PLAN SHOULD BE DENIED CONFIRMATION BECAUSE THE PLAN DOES NOT COMPORT WITH 11 U.S.C. § 1322(b)(5) IN THAT THE CURE PERIOD FOR THE RURAL DEVELOPMENT MORTGAGE DEFAULT IS NOT REASONABLE.**

The debtors' Plan provides that the Rural Development (hereinafter "RD") will be paid the sum of \$15,231.00 over 27 months on its mortgage default claim.

The presumptive cure period for the default on a homestead mortgage in this district is twelve months. In re Newton, 161 B.R. 207, 213-214 (Bankr. D. Minn. 1993). See also First Federal Savings and Loan Association of Minneapolis v. Whitebread, 18 B.R. 192 (Bankr. D. Minn. 1982) and In re Brady, 86 B.R. 166, 170 at n.5 (Bankr. D. Minn. 1988). When a debtor proposes a cure period

beyond twelve months, the burden shifts to the debtor to prove that the objecting creditor will not bear an excessive risk of injury to its debt position and collateral over the extended cure period.

Here the debtors valued the real estate covered by the Rural Development mortgage at \$125,000.00. As of the date of bankruptcy filing the RD was owed the sum of \$102,667.55 on its real estate secured claim. This loan is secured solely by a mortgage on the debtors' homestead property. As the debtors' monthly Rural Development mortgage payment is approximately \$765.00, the current mortgage default reflects nearly 2 years of nonpayment. The Rural Development submits that an extended cure period would not be reasonable in light of RD's small equity cushion and the debtors' lengthy payment default history.

CONCLUSION

For the foregoing reasons, the United States of America on behalf of its agency, the United States Department of Agriculture - Rural Development, respectfully requests that the Court deny

confirmation of the debtors' Chapter 13 Plan of Reorganization, and
for such further relief as the Court deems just and equitable.

Date: October 25, 2004

THOMAS B. HEFFELFINGER
United States Attorney

/e/ Roylene A. Champeaux
By: ROYLENE A. CHAMPEAUX
Assistant United States Attorney
Attorney ID Number 154805
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5685

Attorneys for the USDA -
Rural Development

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 13

MICHAEL E. LOWERS and
RHONDA L. LOWERS,
A/K/A Rhonda L. Landborg,

Case No. BKY 04-45103

Debtors.

UNSWORN DECLARATION
FOR PROOF OF SERVICE

I, Carla R. Kohl, employed by the Office of the United States Attorney, with office address 600 U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415, declares that on October 25, 2004, I served the Objections of the United States of America - United States Department of Agriculture (Rural Development) to Confirmation of the Debtors' Chapter 13 Plan of Reorganization, Memorandum in Support of Objections and proposed Order on the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Robert J. Hoglund, Esq.
Hoglund, Chwialkowski, Greenman
& Bergmanis PLLC
1611 W. Cty. Rd B, Suite 106
P.O. Box 130938
Roseville, MN 55113

Credit Acceptance Corp.
25505 W. 12 Mile Rd., #3000
Southfield, MI 48034

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

Household Bank/SEIU Edge MC
P. O. Box 5222
Carol Stream, IL 60197-5222

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

ECast Settlement Corp.
% Providian
P. O. Box 35480
Newark, NJ 07193-5480

Michael E. Lowers and
Rhonda L. Lowers
23238 Yucca Street
St. Francis, MN 55070

Minnesota Department of Revenue
Collection Enforcement Unit
551 Bankruptcy Section
P.O. Box 64447
St. Paul, MN 55164

Internal Revenue Service
Insolvency Unit
STOP 5700:BKY
316 North Robert St.
St. Paul, MN 55101

Craig Anderson
Assistant Attorney General
Office of MN Attorney General
Tax Litigation Division
1100 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2128

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

Executed: October 25, 2004

Signed: /e/ Carla R. Kohl

CARLA R. KOHL

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:)
) Case No. BKY 04-45103
MICHAEL E. LOWERS and)
RHONDA L. LOWERS,) Chapter 13
a/k/a Rhonda L. Landborg,)
)
Debtors.)

ORDER

This matter came before the undersigned for hearing on confirmation of the Debtors' Plan of Reorganization. The United States of America, on behalf of its agency, the United States Department of Agriculture - Rural Development objected to confirmation. Roylene A. Champeaux, Assistant United States Attorney, appeared on behalf of the United States. Other appearances were as noted on the record.

Based upon the objection, arguments of counsel and all of the files, records and proceedings herein,

IT IS HEREBY ORDERED that confirmation of the debtors' Chapter 13 Plan of Reorganization is denied.

Dated:

NANCY C. DREHER
United States Bankruptcy Judge