

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CASE NO. 03-38687 DDO

Christine K. Hanner
SSN XXX-XX-7704
Richard F. Hanner
SSN XXX-XX-9644

CHAPTER 13 CASE

Debtor.

NOTICE OF OBJECTION TO CONFIRMATION OF PLAN

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

1. Fairbanks Capital 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 March 11, 2004, before the Honorable Dennis D. O'Brien in Courtroom 228A at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any reply to this objection must be filed and delivered not later than 10:30 a.m. on March 10, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than March 8, 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 December 31, 2003. 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 \$147,805.89, as evidenced by that certain Promissory Note dated September 14, 1999, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain Mortgage Deed dated September 14, 1999, executed by Richard Frank Hanner and Christine Katherine Hanner, husband and wife, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B".

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)(6).

9. Said plan is also objected to on the basis that Debtor is delinquent in their pre-petition monthly mortgage payments to Secured Creditor for the months of August, 2001 through December, 2003, in the total amount of \$26,192.48, including late charges and that said delinquency existing in Debtor's mortgage loan cannot be cured within a reasonable time as required by 11 U.S.C. § 1322(b)(5). In In re Newton, 161 B.R. 207 (Bkrcty.D.Minn. 1993), this Court reaffirmed its previous finding that more than 12 months is ordinarily not a reasonable time to cure a default in pre-petition homestead mortgage payments under 11 U.S.C. § 1322(b)(5). The plan, as proposed by Debtor, would require approximately 30 months to complete based on the Proof of Claim filed by Secured Creditor. 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).

10. The value of the property as scheduled by Debtor is \$245,000.00 subject to Secured

Creditor's mortgage in excess of \$171,174.93.

11. The plan, as proposed, is not made in good faith by Debtor.
12. Therefore, it is requested that the Court deny confirmation of Debtor's plan.

Dated this 10th day of February, 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.

0808298108

NOTE

September 14, 1998

IRVINE

CALIFORNIA

(Date)

(City)

(State)

18008 ST. PAUL AVENUE

PEIQR LAKE, MINNESOTA 55372

(Property Address)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 151,300.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is NEW CENTURY MORTGAGE CORPORATION, A CALIFORNIA CORPORATION

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 8.9800 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on November 1

1998. 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. My monthly payments will be applied to interest before principal. If, on October 1, 2029, I still owe amounts under this Note, I will pay these amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 18400 VON KAERNAN, 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. \$ 1,216.31

This is a certified true and correct copy of the original

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: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) 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 - Nonconforming

11/98

Page 1 of 3

106(MIN) (2/98)

NEW MORTGAGE FORMS - (709421-720)

Title: Cdt.

EXHIBIT A



Fairbanks Capital Document System - February 2004

161841 9808316243 400322610

NEW CENTURY MORTGAGE CORPORATION
18400 VON KARMAN, SUITE 1000
IRVINE, CA 92612
Loan Number: 0088288106

(Space Above This Line For Recording Data)

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on **September 14, 1999**
The mortgagor is
RICHARD FRANK WARNER AND CHRISTINE KATHERINE WARNER, HUSBAND AND WIFE

("Borrower"). This Security Instrument is given to
NEW CENTURY MORTGAGE CORPORATION

which is organized and existing under the laws of **CALIFORNIA**
address is **18400 VON KARMAN, SUITE 1000**
IRVINE, CA 92612

, and whose

(Lender). Borrower owes Lender the principal sum of
One Hundred Fitty-One Thousand, Three Hundred and No/100

Dollar (U.S.\$ **151,300.00**).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which
provides for monthly payments, with the full debt, if not paid earlier, due and payable on
October 1, 2028

and for interest at the yearly rate of **8.99%**

percent. This Security Instrument secures to Lender: (a) the repayment of
the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the
payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security

MINNESOTA - Single Family-FMNA/FHLMC UNIFORM INSTRUMENT

Form 3034 8/99
Revised 1/99
www.fairbanks.com

Page 1 of 8
NEW CENTURY MORTGAGE FORMS - (800) 211-7291



1080316243 400012718 Mortgage

EXHIBIT B

0000208108

instrument; and (c) 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, with power of sale, the following described property located in **SCOTT** County, Minnesota: **SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.**

A.P.N.: 25004 0320
which has the address of **16009 ST. PAUL AVENUE** **PRIOR LAKE** (Street, City)
Minnesota **55372** (Zip Code) ("Property Address")

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any circumstances 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 retain priority over this Security Instrument as a lien on the Property; (b) yearly household payments or ground taxes on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. 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. Section 2601 et seq. ("RESPA"), unless another law 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 in an institution where deposits are insured by a federal agency, instrumentally, or equity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. 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

0009298105

The notice shall further inform Borrower of the right to reinstate 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 paragraph 21, 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.

22. Release. Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument to Borrower. 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.

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

24. Interest on Advances. The interest rate on advances made by Lender under paragraph 7 shall not exceed the maximum rate allowed by applicable law.

25. 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 such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)]

- | | | |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> Graduated Payment Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Biweekly Payment Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Rent Improvement Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> VA Rider | <input type="checkbox"/> Other(s) (specify) | |

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

Witnesses:

Richard Frank Hansen

Christine Katherine Hanner

CHRISTINE KATHERINE HANNER - Borrower

_____	_____ (Seal)
_____ (Seal)	_____ (Seal)
_____ -Borrower	_____ -Borrower
_____ (Seal)	_____ (Seal)
_____ -Borrower	_____ -Borrower
_____ (Seal)	_____ (Seal)
_____ -Borrower	_____ -Borrower

Fairbanks Capital Document System - February 4, 2004

0000258188

STATE OF MINNESOTA

Scott

County is:

On this 14 day of September, 1999, before me appeared

Christine Katherine Haaner and Richard Frank Haaner

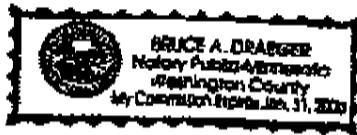
personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

Bruce A. Drabger

Notary Public

My Commission Expires: 1-31-2000

This instrument was prepared by NEW CENTURY MORTGAGE CORPORATION
18400 VON KARMAN, SUITE 1000 IRVINE, CA 92612



100101 (1/14/99)

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B.H. CH.
Form 8024 8/00

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Christine K. Hanner
SSN XXX-XX-7704
Richard F. Hanner
SSN XXX-XX-9644

CASE NO. 03-38687 DDO

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

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 February 10, 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:

Christine K. Hanner
Richard F. Hanner
16009 St. Paul Avenue SE
Prior Lake, MN 55372

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

Robert J. Wendling
Wendling & Associates
201 W Burnsville Pkwy, Suite 106
Burnsville, MN 55337

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 10th day of February, 2004.

/e/ Diana Waletzko
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

**ORDER DENYING CONFIRMATION
OF PLAN**

Christine K. Hanner
SSN XXX-XX-7704
Richard F. Hanner
SSN XXX-XX-9644

Debtor.

CASE NO. 03-38687 DDO

This Chapter 13 Case came on before the Court on March 11, 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 December 31, 2003, is denied.

Dated: _____
Judge of Bankruptcy Court