

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CASE NO. 04-33716 GFK

Ronald Jay Baer
SSN XXX-XX-6910
Carol Jean Baer
Carol J. Kiffe
SSN XXX-XX-1589

CHAPTER 13 CASE

Debtor.

NOTICE OF OBJECTION TO CONFIRMATION OF PLAN

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

1. ABN AMRO Mortgage Group, Inc. (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 August 26, 2004, before the Honorable Gregory F. Kishel in Courtroom 228B 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 August 25, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than August 23, 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 June 24, 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 \$180,000.00, as evidenced by that certain Promissory Note dated December 17, 2001, 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 December 17, 2001, executed by Ronald J. Baer and Carol J. Baer, husband and wife, recorded January 28, 2002, as Document No. 535753, 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 October, 2003 through August, 2004, in the total amount of \$17,140.23, 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 (Bkrtcy.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 21 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 \$215,000.00 subject to Secured

Creditor's mortgage in excess of \$194,545.67.

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 16th day of August, 2004.

WILFORD & GESKE

By /e/ Lawrence A. Wilford
Lawrence A. Wilford
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, Minnesota 55125
651-209-3300
Attorney Reg. No. 117109

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

LOAN NO. 618777191

NOTE

DECEMBER 17 , 2001
(Date)PRIOR LAKE
(City)MN
(State)2326 MATHIAS ROAD
SHAKOPEE, MN 55379

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 180,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is VOYAGEUR FINANCIAL, INC., DBA MINNESOTA GUARANTY 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 8.625 %.

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 a payment every month.

I will make my monthly payment on the 1ST day of each month beginning on FEBRUARY 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 JANUARY 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
14093 COMMERCE AVENUE N.E., PRIOR LAKE, MN 55372

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. \$ 1,400.03 .

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

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.

Doc. No. A 535753

**OFFICE OF THE COUNTY RECORDER
SCOTT COUNTY, MINNESOTA**

Certified Filed and/or Recorded on

01-28-2002 at 10:00 Receipt: 155107

Pat Boeckman, County Recorder 01

by MM, Deputy Fee: \$20.00

Registration tax of \$ 414.00 paid
Treasurer's Receipt No. 155105
Conservation Fee Paid

[Signature] County Auditor

LOAN NO.: 618777191

(Space Above This Line For Recording Date)

MORTGAGE

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 **DECEMBER 17, 2001** together with all Riders to this document.

(B) "Borrower" is **RONALD J. BAER AND CAROL J. BAER, HUSBAND AND WIFE**

77-6306797
UNIVERSAL TITLE
METRO PRODUCTION,
7777 WASHINGTON AVE
EDINA, MN 55439

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is **VOYAGEUR FINANCIAL, INC.
DBA MINNESOTA GUARANTY MORTGAGE CORPORATION**

Lender is a **CORPORATION**
organized and existing under the laws of **THE STATE OF MINNESOTA**
Lender's address is **14093 COMMERCE AVENUE N.E.
PRIOR LAKE, MN 55372**

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated **DECEMBER 17, 2001**. The Note states that Borrower owes Lender

ONE HUNDRED EIGHTY THOUSAND AND 00/100
Dollars (U.S. \$ **180,000.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **JANUARY 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.

EXHIBIT B

(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]:

- | | | |
|---|---|--|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> Biweekly Payment Rider | <input type="checkbox"/> V.A. Rider | |
| <input type="checkbox"/> 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 so 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.

(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 5) 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. §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 **SCOTT**
(Type of Recording Jurisdiction) (Name of Recording Jurisdiction)

LOT 3, BLOCK 3, PHEASANT RUN 5TH ADDITION, SCOTT COUNTY, MINNESOTA

27-310-026-0

which currently has the address of

2326 MATHIAS ROAD

(Street)

SHAKOPEE
(City)

, Minnesota

55379
(Zip Code)

("Property Address"):

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

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

RB *UB*

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.

Witnesses:

Ronald J. Baer
RONALD J. BAER (Seal)
-Borrower

Carol J. Baer
CAROL J. BAER (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Space Below This Line For Acknowledgment]

STATE OF MINNESOTA,

County ss:

On this 17th day of December, 20 01, before me appeared
RONALD J. BAER AND CAROL J. BAER, HUSBAND AND WIFE

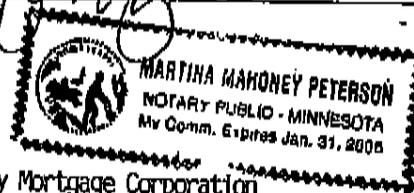
to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that ~~he/she~~ they executed the same as ~~his/her~~ their free act and deed.

Martina Mahoney Peterson
- Notary Public

My Commission expires: 1-31-05

This instrument was prepared by:

Voyageur Financial, Inc., DBA Minnesota Guaranty Mortgage Corporation
14093 Commerce Avenue N.E.
Prior Lake, MN 55372



Tax statement sent to:

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Ronald Jay Baer
SSN XXX-XX-6910
Carol Jean Baer
Carol J. Kiffe
SSN XXX-XX-1589

CASE NO. 04-33716 GFK

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 August 16, 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:

Ronald J. Baer
Carol J. Baer
2326 Mathias Road
Shakopee, MN 55379

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

G Martin Johnson
G Martin Johnson LTD
3800 W Old Shakopee Rd
Bloomington, MN 55431

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 16th day of August, 2004.

/e/ Diana Waletzko
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

**ORDER DENYING CONFIRMATION
OF PLAN**

Ronald Jay Baer
SSN XXX-XX-6910
Carol Jean Baer
Carol J. Kiffe
SSN XXX-XX-1589

Debtor.

CASE NO. 04-33716 GFK

This Chapter 13 Case came on before the Court on August 26, 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 June 24, 2004, is denied.

Dated: _____
Judge of Bankruptcy Court