

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Anthony Hugh Brown
SSN XXX-XX-8696

CASE NO. 04-33984 DDO

CHAPTER 13 CASE

Debtor.

NOTICE OF OBJECTION TO CONFIRMATION OF PLAN

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

1. Principal Residential Mortgage, 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 October 14, 2004, before the Honorable Dennis D. O'Brien in Courtroom 228A at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota..

3. 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 July 8, 2004. The case is now pending before this Court.

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

5. Debtor is indebted to Secured Creditor in the principal amount of \$224,650.00, as evidenced by that certain Promissory Note dated May 30, 2003, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

6. 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 May 30, 2003, executed by Anthony H. Brown and Loyda Torres, 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".

7. 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).

8. Said plan is also objected to on the basis that Debtor is delinquent in his pre-petition monthly mortgage payments to Secured Creditor for the months of April, 2004 through July, 2004, in the total amount of \$8,128.00, 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 25 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).

9. The value of the property as scheduled by Debtor is \$240,000.00 subject to Secured Creditor's mortgage in excess of \$235,196.39.

10. Said plan is further objected to on the basis that Debtor is delinquent in his post-petition monthly mortgage payment to Secured Creditor for the month of August, 2004 through October, 2004, in the amount of \$2,077.89 per month, not including late charges.

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 12th 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.

110
NOTE

8179192-5

MIN 100154060000016366
MERS Phone: 1-888-679-6377

LOAN NO.: 5386708

MAY 30, 2003
[Date]

ST. PAUL
[City]

MINNESOTA
[State]

421 MARY STREET S, MAPLEWOOD, MN 55119
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 224,650.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is

AMERICAN RESIDENTIAL MORTGAGE, LP, A LIMITED PARTNERSHIP

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 6.500 %.

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 JULY, 2003. 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 JUNE 01, 2033, 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 AMERICAN RESIDENTIAL MORTGAGE, LP ATTN: PAYMENT PROCESSING 235 E. ROSELAWN AVENUE, SUITE 13, MAPLEWOOD, MN 55117 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. \$ 1,419.94

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.

Initials: *[Signature]*
Form 3200 1/0

EXHIBIT *[Signature]*

0900
20
jlc
06

REC 10/27/2004
DOC# 3640035
Certified Recorded On
JUNE 27, 2003 AT 04:00PM

OFFICE CO. RECORDER
RAMSEY COUNTY MN

Fee Amount: \$20.00



RAMSEY COUNTY

Receipt No: 33050 Date: 6/12/2003
Registration tax hereon of \$539.16 Paid
MN Conservation Fund M.S. 473H \$5.00 Paid
Dorothy A. McClung, Auditor by Ckbruce

[Space Above This Line For Recording Data]

MORTGAGE

LOAN NO.: 5386708

MIN 100154060000016368
MERS Phone: 1-888-679-6377

Return To:
AMERICAN RESIDENTIAL MORTGAGE, LP
235 E. ROSELAWN AVENUE, SUITE 13
MAPLEWOOD, MN 55117

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 **MAY 30, 2003** together with all Riders to this document.

MINNESOTA Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS
VMP-6A(MN) (0006)

Page 1 of 18

LENDER SUPPORT SYSTEMS, INC. MERSGAMN.NEW (11/02)

Form 3024 1/01

RETURN TO
DISBURSEMENT 3-34299 1-15

EXHIBIT B

(B) "Borrower" is ANTHONY H. BROWN AND LOYDA TORRES, HUSBAND AND WIFE

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is AMERICAN RESIDENTIAL MORTGAGE, LP, A LIMITED PARTNERSHIP

Lender is a LIMITED PARTNERSHIP organized and existing under the laws of MINNESOTA Lender's address is 235 E. ROSELAWN AVENUE, SUITE 13, MAPLEWOOD, MN 55117

(E) "Note" means the promissory note signed by Borrower and dated MAY 30, 2003

The Note states that Borrower owes Lender TWO HUNDRED TWENTY FOUR THOUSAND SIX HUNDRED FIFTY AND NO/100 X X X X X X X X X X Dollars (U.S. \$ 224,650.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JUNE 01, 2033

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

(G) "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.

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

- Adjustable Rate Rider, Condominium Rider, 1-4 Family Rider, Graduated Payment Rider, Planned Unit Development Rider, Biweekly Payment Rider, Balloon Rider, Rate Improvement Rider, Second Home Rider, Other(s) [specify]

(I) "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.

(J) "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.

(K) "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.

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:

-Witness

-Witness



ANTHONY H. BROWN (Seal)
-Borrower



LOYDA TORRES (Seal)
-Borrower

(Seal)
-Borrower

STATE OF MINNESOTA

Ramsey

County ss:

On this 30th day of May, 2003

, before me appeared

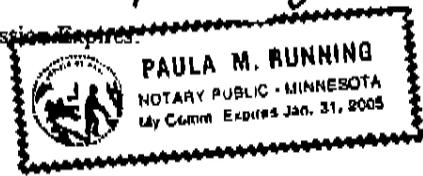
ANTHONY H. BROWN AND LOYDA TORRES, HUSBAND AND WIFE

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/hers/their free act and deed.

Paula M. Running

Notary Public

My Commission Expires:



This instrument was drafted by:

AMERICAN RESIDENTIAL MORTGAGE, LP
235 E. ROSELAWN AVE. #13
MAPLEWOOD, MN 56117
(651) 488-1801

Tax statements for the real property described in this instrument should be sent to:
PRINCIPAL RESIDENTIAL MORTGAGE, INC.

P.O. BOX 711
DES MOINES, IOWA 50303-0711
1-800-367-6448

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Anthony Hugh Brown
SSN XXX-XX-8696

CHAPTER 13 CASE

CASE NO. 04-33984 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 October 12, 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:

Anthony H. Brown
421 Mary St South
Maplewood, MN 55119

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

Curtis K. Walker
4356 Nicollet Ave S
Minneapolis, MN 55409

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 12th day of October, 2004.

/e/ Diana Waletzko
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

**ORDER DENYING CONFIRMATION
OF PLAN**

Anthony Hugh Brown
SSN XXX-XX-8696

Debtor.

CASE NO. 04-33984 DDO

This Chapter 13 Case came on before the Court on October 14, 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 27, 2004, is denied.

Dated: _____
Judge of Bankruptcy Court