

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CASE NO. 04-34602 DDO

Vincent M. Running
SSN XXX-XX-9680
Theresa A. Running
SSN XXX-XX-4451

CHAPTER 13 CASE

Debtor.

NOTICE OF OBJECTION TO CONFIRMATION OF PLAN

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

1. U.S. Bank National Association, as Trustee under the Pooling and Servicing Agreement, dated as of June 1, 2003, among Credit-Based Asset Servicing and Securitization LLC, Merrill Lynch Mortgage Investors, Inc., Litton Loan Servicing LP and U.S. Bank National Association, C-BASS Mortgage Loan Asset-Backed Certificates, Series 2003-CB3 c/o Litton Loan Servicing (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. Any reply to this objection must be filed and delivered not later than 10:30 a.m. on October 13, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than October 11, 2004, which is three days before the time set for the hearing. **UNLESS A REPLY OPPOSING THE OBJECTION IS TIMELY FILED, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this objection pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core

proceeding. The petition commencing this Chapter 13 case was filed August 6, 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 \$192,600.00, as evidenced by that certain Promissory Note dated January 30, 2003, 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 January 30, 2003, executed by Vincent M. Running and Theresa A. Running, as joint tenants, recorded February 12, 2003, as Document No. 395506, 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 May, 2004 through August, 2004, in the total amount of \$5,554.44, 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 23 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 \$240,000.00 subject to Secured

Creditor's mortgage in excess of \$195,437.53.

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 29th day of September, 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.

ADJUSTABLE RATE NOTE
(LIBOR Six-Month Index (As Published In
The Wall Street Journal)-Rate Caps)

430000 FRI

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

January 30, 2003
(Date)

PITTSBURGH
(City)

Pennsylvania
(State)

6081 258TH STREET, WYOMING, MN 55092
(Property Address)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 192,600.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is HomeGold, Inc., a South Carolina Corporation.

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. 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 7.560 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(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 payments on the 4th day of each month beginning on March, 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 February 4, 2003, 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 HomeGold, Inc., P.O. BOX 21039, Columbia, SC

29221-1039

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 1,354.61. This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the 4th day of February, 2005 and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

Loan No: 469889680

Initials: *[Signature]*



EXHIBIT A

Apr 14 '04 04:48p R & K Enriquez 881 484-1887 p.2

ADVANTAGE EQUITY SERVICES
 OFFICE OF COUNTY RECORDS
 Chicago County, Missouri
 I hereby certify that this document was filed in this office on 04/14/04 at 11:09:00 AM and was duly recorded in document number A-518808
 BLANK OPTION - County Recorder, by _____ Deputy
 Was Certified _____ Received _____ Not Required _____

APR 30 2004

34163
 12/2003
 [Handwritten signatures and notes]

Fee:	
ELECTRONIC FILING FEE	6.50
RECORDING FUND	1.00
STATE RECHARGE	4.50
GENERAL ABSTRACT	14.00
Total	26.00

MORTGAGE

8700627
2003.3

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-388508

- (A) "Security Instrument" means this document, which is dated January 30, 2003 together with all Riders to this document.
- (B) "Borrower" is VINCENT H MERRING and TERESA A MERRING, as joint tenants

(C) "Lender" is **Homehold, Inc.**, a South Carolina Corporation.
 Lender is a corporation organized and existing under the laws of South Carolina. Lender's address is 113 Reed Avenue, Lexington, SC 29072.
 Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated January 30, 2003. The Note states that Borrower owes Lender one hundred thirty two thousand six hundred and 00/100ths Dollars (U.S. 292,600.00) plus interest. Borrower has promised to pay this debt in regular periodic payments and to pay the debt in full not later than February 4, 2033.

- (E) "Property" means the property that is described below under the heading "Traverse of Rights in the Property."
- (F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges that under the Note, and all amounts due under this Security Instrument, plus interest.

Loan No: 66989680
 Home Mortgage Single Family 9 state Street 10th Floor
 THE COMPLIANCE GROUP, INC.
 Page 1 of 11
 Form 604 (04)
 Date: 04/14/04

ADVANTAGE EQUITY SERVICES
 1801 NEEDSDALE ST
 STE 104
 PITTSBURGH, PA 15223

1925121

EXHIBIT B

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R & K Enriquez

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p.3

395506

EXHIBIT A

REAL PROPERTY IN CHISAGO COUNTY, MINNESOTA. DESCRIBED AS FOLLOWS:

LOT 6, BLOCK 5, THURANDECK POND'S 2ND ADDITION
TAX PARCEL ID: 23-00715-97
ADDRESS: 6081 25TH ST.
WYOMING, MN 55092

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R & K Enriquez

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which originates from the address of
6081 ZIMMER STREET
WILSONVILLE, Missouri 65092 (Property Address)
(City) (Zip Code)

TOGETHER WITH all the improvements now or hereafter erected on the property, and all interests, appurtenances, and fixtures now or hereafter a part of the property. All requirements and conditions 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 same hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unincumbered, 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 contains uniform covenants for national use and non-uniform covenants with updated verbiage by jurisdiction to constitute a valid security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Taxes, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay taxes for Borrower's term pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any checks or other instruments received by Lender as payment under the Note or this Security Instrument is returned by Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, borrower's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a Federal agency, instrumentally, or via; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may retain any payment or partial payment if the payment or partial payment is insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No other or claims which Borrower might have now or in the future against Lender shall release Borrower from making payments due under the Note and this Security Instrument or performing the covenants and obligations secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to such Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to the charges, interest or any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay late charges due, the payment may be applied to the delinquent payment and the late charges. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the payment of the Periodic Payment due and to the extent that each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Loan No: 469889880

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intended transferee as if a new loan were being made to the transferee and (b) Lender conclusively determines that Lender's security will not be impaired by the loan assumption and that the right of a breach of any covenant or agreement in this Security Instrument is assignable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 13 within which Borrower must pay all sums due under this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and conditions contained in this Adjustable Rate Note.

Veronica M. Enriquez (Seal) *Thomas A. Running* (Seal)
VERONICA M. ENRIQUEZ THOMAS A. RUNNING

____ (Seal) _____ (Seal)
Borrower Borrower

Loan No: 46980600

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Vincent M. Running
SSN XXX-XX-9680
Theresa A. Running
SSN XXX-XX-4451

CASE NO. 04-34602 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 September 29, 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:

Vincent M. Running
Theresa A. Running
6081 258th St N
Wyoming, MN 55092

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

Ronald J. Lundquist
10 S 5th St Ste 700
Minneapolis, MN 55402

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 29th day of September, 2004.

/e/ Diana Waletzko
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

**ORDER DENYING CONFIRMATION
OF PLAN**

Vincent M. Running
SSN XXX-XX-9680
Theresa A. Running
SSN XXX-XX-4451

Debtor.

CASE NO. 04-34602 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 6, 2004, is denied.

Dated: _____
Judge of Bankruptcy Court