

A TRUE COPY
WAVERLYN E. FOUST, CLERK
U. S. BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA
BY: *[Signature]*

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE:	)	
HENRY S. BRISTOW, JR.,	)	BANKRUPTCY CASE NO.
Debtor.	)	84-04536
BUDD FINANCIAL CORPORATION,	)	
Plaintiff,	)	
vs.	)	ADVERSARY PROCEEDING NO.
HENRY S. BRISTOW, JR. and	)	84-0623
LILLA J. BRISTOW,	)	
Defendants.	)	

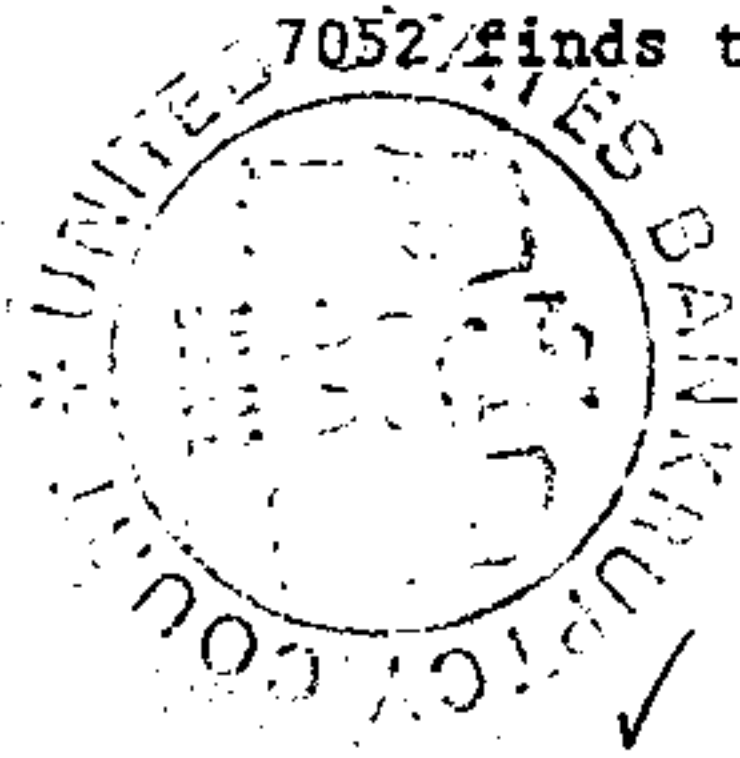
ORDER

This cause having come to be heard upon the Complaint of Budd seeking a declaration and determination of property of the Estate of Henry S. Bristow, Jr. and of the nature of the judgment liens of Budd attaching thereto, and this Court having considered the evidence, the arguments of counsel and the Joint Stipulation is of the opinion that the requested relief is due to be granted.

FINDINGS OF FACT

This Court in accordance with Bankruptcy Rule

7052 finds the following facts:



Cabaniss, Johnston, et al

[Signature]

1. Prior to July 15, 1965, Henry S. Bristow, Jr., the Debtor herein, and Lilla J. Bristow acquired title to the property described on Exhibit A attached hereto and incorporated by reference herein (the "Property") jointly with right of survivorship. At all times subsequent to July 15, 1965 and prior to the commencement of this Bankruptcy Case, the Property was owned by Henry S. Bristow, Jr. and Lilla J. Bristow jointly with right of survivorship.

2. This Bankruptcy Case was commenced on August 30, 1984 by the filing by Henry S. Bristow, Jr., individually, of a voluntary petition under 11 U.S.C. § 1101 et seq.

3. On or about April 23, 1982 and May 26, 1982, respectively, in excess of two years prior to the commencement of this Bankruptcy Case, Budd Financial Corporation ("Budd") recorded certificates of judgment against Henry S. Bristow, Jr. in the Office of the Judge of Probate of Shelby County, Alabama, in Book R, page 847 and in Book R, page 954.

4. On or about April 16, 1982 and May 19, 1982, respectively, in excess of two years prior to the commencement of this Bankruptcy Case, Budd recorded certificates of judgment against Henry S. Bristow, Jr. in the Office of the Judge of Probate of Jefferson County,

3.

Alabama, in Real Volume 2183, page 613 and in Real Volume 2195, page 585. The judgments in favor of Budd and against Henry S. Bristow, Jr. shall be referred to herein as the "Budd Judgments."

5. While there exist credits to the Budd Judgments in the form of payments and the surrender and sale of collateral by Bristow Trucking Company, Budd is owed a substantial sum of money which claim shall be liquidated in this Bankruptcy Case.

CONCLUSIONS OF LAW

Pursuant to the above findings of fact this Court enters the following conclusions of law and orders thereon.

1. This Court possesses jurisdiction of this Adversary Proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (K) and (O), § 1334 and § 2201 and pursuant to the consent of Lilla J. Bristow. It is a core proceeding to the extent that it involves the determination of property of the Estate pursuant to 11 U.S.C. § 541 and the determination of the validity of the Budd Judgment liens against property of the Estate. To the extent that the determination of the interest of Lilla J. Bristow in and to the Property may not be a core proceeding this Order shall constitute a report and recommendation to the

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District Court of proposed findings of fact and conclusions of law.

2. Henry S. Bristow, Jr. and Lilla J. Bristow acquired title to the Property prior to July 15, 1965 jointly with right of survivorship and did not change the status of ownership prior to the commencement of this Bankruptcy Case. In Bernhard v. Bernhard, 278 Ala. 240, 177 So. 2d 565 (1965), decided on July 15, 1965, the Supreme Court of Alabama held that a deed containing the language "joint tenants with rights of survivorship" created a tenancy in common with cross contingent remainders in fee.

This ruling was the law of Alabama until the decision of Nunn v. Keith, 289 Ala. 518, 268 So. 2d 792 (1972) which reinstated the common law joint tenancy in Alabama and held that the language "joint tenants with rights of survivorship" created a joint tenancy with rights of survivorship as at common law. The court in Nunn v. Keith found that a joint tenancy in Alabama "differs from the common law estate of the same name only insofar as (1) the statutory requirement that the intention to have the right of survivorship must be clearly expressed in the instrument of conveyance, and (2) elimination of the common law unity of time." Id. at 797, see Ala. Code § 35-4-7 (1975). Accordingly, deeds executed

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5.

before July 15, 1965 such as the deeds to the property are governed by the rule in Nunn v. Keith and not by the rule in Bernhard v. Bernhard. Bringhurst v. Hardin, 387 So. 2d 186 (Ala. 1980); Bank of Lexington v. Jones, 18 ABR 4066, 4067 (1984).

3. A common law joint tenancy was created between Mr. and Mrs. Bristow by the deeds to the Property.

4. Under the law of Alabama a joint tenancy is severable and destructible as at common law. Nunn v. Keith, 289 Ala. 518, 268 So. 2d 792, 797 (1972).

5. The recordation of the Budd Judgments more than 90 days prior to the commencement of this Bankruptcy Case created valid and enforceable liens against the undivided one-half interest of Henry S. Bristow, Jr. in and to the Property to the extent of the allowed secured claim of Budd. Code of Alabama §§ 6-9-210, 6-9-211 (1975); e.g., Shrout v. Seale, 287 Ala. 15, 250 So. 2d 592 (1971).

6. In general, the commencement of a bankruptcy case creates a separate estate, and specifically, the commencement of this Bankruptcy Case created the separate Estate of Henry S. Bristow, Jr.. The creation of this separate estate of Henry S. Bristow, Jr. severed the joint tenancy with right of survivorship between Henry S. Bristow, Jr. and Lilla J. Bristow with respect to the

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Property by destroying the unities of title and interest. In re Lambert, 34 B.R. 41 (D. Colo. 1983); In re Miles, 35 B.R. 52 (E.D. Calif. 1983); In re Panholzer, 36 B.R. 647 (D. Md. 1984).

In Lambert the Bankruptcy Court applied the state law of Colorado (which is virtually identical to the present law of Alabama with respect to joint tenancies) in determining what was property of the estate pursuant to 11 U.S.C. § 541 in the context of the filing a voluntary bankruptcy case by one of two joint tenants followed by the death of the debtor. The Court found that the commencement of the bankruptcy case severed the joint tenancy, thereby destroying the element of survivorship and rendering the debtor and the non-bankrupt joint owner tenants in common. Lambert at 43.

In reaching this conclusion the Court in Lambert quoted from the legislative history and 11 U.S.C. §§ 363 and 522, as follows:

However, legislative history provides some clarification. "The debtor's interest in property also includes 'title' to property, which is an interest, just as are a possessory interest, or leasehold interest, for example." Senate Report No. 95-989, 95th Cong. 2d Sess. 82-3 (1978), U.S. Code Cong. & Admin. News 1978, pp. 5787, 5868. And further, in that same report, it is stated: "Once the estate is created, no interests in property of the estate remain in the debtor. Consequently, if the debtor dies during

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the case, only property exempted from property of the estate ... will be available to the representative of the debtor's probate estate. The bankruptcy proceeding will continue in rem with respect to property of the estate, and the discharge will apply in personam to relieve the debtor, and thus his probate representative, of liability for dischargeable debts." See also Bankruptcy Rule 1016.

Although several Code sections appear to support the thesis that a joint tenancy survives the filing of a bankruptcy petition, on closer examination those sections lend support to the antithesis. For example, Sec. 363(h) provides in pertinent part, "... the trustee may sell both the estate's interest ... and the interest of any co-owner in property in which the debtor had, immediately before the commencement of the case, an undivided interest as a ... joint tenant...." (Emphasis added.) Likewise, Sec. 522(b)(2)(B) provides in pertinent part that a debtor may exempt from property of the estate "... any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a ... joint tenant...." (Emphasis added.)

Both of these sections are written in the past tense "had", not the present tense "has", thus indicating that the debtor no longer holds the title that he did just prior to commencement of the case.

Lambert at 43.

7. This Court supports and adopts the reasoning in Lambert and concludes that the commencement of this Bankruptcy Case severed the common law joint tenancy with right of survivorship and destroyed the survivorship

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element of joint ownership of the Property, such that the Estate of Henry S. Bristow, Jr., on the one hand, and Lilla J. Bristow, on the other hand, each now own an undivided one-half interest in and to the Property as tenants in common. The undivided one-half interest of Henry S. Bristow, Jr. in and to the Property constitutes property of the Estate of Henry S. Bristow, Jr. pursuant to 11 U.S.C. § 541.

8. To the extent that Budd's claim based upon the Budd Judgments is allowed in amount it constitutes a secured claim against the Estate of Henry S. Bristow, Jr. and is secured by a perfected lien upon the undivided one-half interest of the Estate of Henry S. Bristow, Jr. in and to the Property, which interest of the Estate cannot now be divested by the death of Henry S. Bristow, Jr.

Accordingly, it is ORDERED, ADJUDGED and DECREED as follows:

1. The Estate of Henry S. Bristow, Jr. and Lilla J. Bristow each own an undivided one-half interest in and to the Property as tenants in common and without any rights of survivorship.

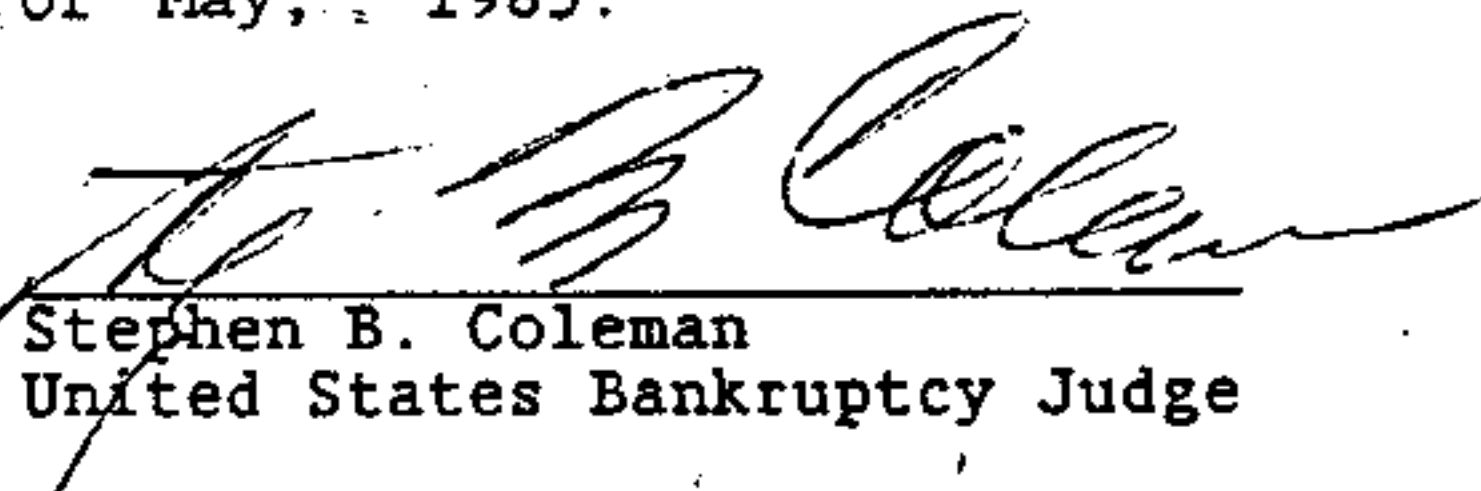
2. The Budd Judgments constitute valid and perfected liens against the undivided one-half interest of the Estate of Henry S. Bristow, Jr. in and to the Property

to the extent that the secured claim of Budd based upon the Budd Judgments is allowed in amount by this Court.

3. To the extent that the determination of the interest of Lilla J. Bristow in and to the Property may not be a core proceeding this Order shall constitute a report and recommendation to the District Court of proposed findings of fact and conclusions of law.

4. Nothing contained herein shall prevent the Budd Judgments from constituting liens upon other property of Henry S. Bristow, Jr. located in Shelby and Jefferson Counties, Alabama and subject to levy and sale under execution as provided by Code of Alabama § 6-9-211 (1975).

DONE this 6th day of May, 1985.


Stephen B. Coleman
United States Bankruptcy Judge

ORDER ON REPORT AND RECOMMENDATION

This Court, having reviewed the above Joint Stipulation, the Proposed Findings of Fact and Conclusions of Law, the recommendation of the Bankruptcy Judge and no party having objected and requested a de novo hearing, is of the opinion that the above Order is due to be entered.

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Accordingly, it is ORDERED, ADJUDGED and DECREED as follows:

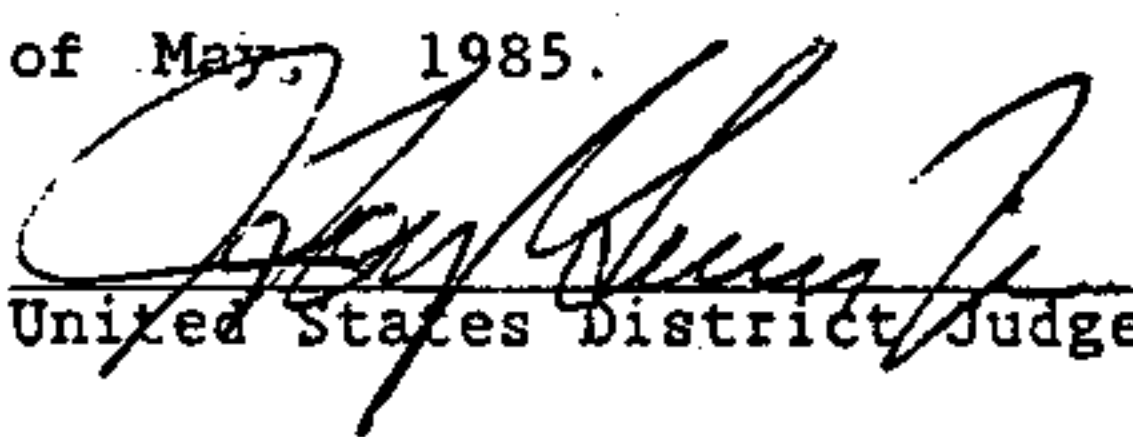
1. The Estate of Henry S. Bristow, Jr. and Lilla J. Bristow each own an undivided one-half interest in and to the Property as tenants in common and without any rights of survivorship.

2. The Budd Judgments constitute valid and perfected liens against the undivided one-half interest of the Estate of Henry S. Bristow, Jr. in and to the Property to the extent that the secured claim of Budd based upon the Budd Judgments is allowed in amount by this Court.

~~_____~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~

3. Nothing contained herein shall prevent the Budd Judgments from constituting liens upon other property of Henry S. Bristow, Jr. located in Shelby and Jefferson Counties, Alabama and subject to levy and sale under execution as provided by Code of Alabama § 6-9-211 (1975).

DONE this 29th day of May, 1985.


United States District Judge

LEGAL DESCRIPTION

PARCEL 1
BRISTOL FARM

DESCRIPTION	SEC	TSP	RNG	AC
AN UNDIVIDED 1/2 INTEREST IN THE FOLLOWING: (SHELBY COUNTY):				
S1/2 of SW1/4				
W1/2 of SE1/4				
NE1/4 of SW1/4, less ac. in SW Corner	12	22S	1W	192
W1/2 of W1/2, lying north of old Shelby-Calera Road, less a .8 acre lot described as follows:				
Begin NW cor. Sec. 13, thence South 3 deg. 45' East 594.4 feet; thence South 36 deg. 55' East 1109.02 feet; thence South 11 deg. 10' East, 171.5 feet to P.O.B.; thence continue South 11 deg. 10' East 330 feet; thence South 84 deg. 30' West 73.6 feet to North side of R.R. right-of-way; thence turn to the right and follow the North side of the R.R. right-of-way in a north westerly direction for 335 feet, thence North 84 deg. 30' East 140 feet to P.O.B.				
	13	22S	1W	133.4
Begin at S.W. corner Sec. 13; thence South 70.7 feet; thence East along N. side of R.R. right-of-way 561.86 ft; thence North 363.49 feet to N. right-of-way of paved Shelby-Calera Road and the P.O.B.; thence continue North 43.7 feet to South R.O.W. of gravel Old Shelby-Calera Road, thence East along R.O.W. 434.8 feet; thence 69 deg. 2' to the right 63.03 feet to N. R.O.W. of paved Shelby-Calera road; thence west along R.O.W. 467.5 feet to P.O.B.				
	13	22S	1W	0.3
NW1/4 of NE1/4	13	22S	1W	40

DESCRIPTION

AN UNDIVIDED 100% INTEREST IN THE FOLLOWING (SHELBY COUNTY):

Part of E1/4 of NW1/4 described as follows:

Begin NE cor. of NW1/4; thence South 1532.5 feet; thence South 44 deg. 30' West 824.5 feet; thence South 84 deg. 30' West to the West line of the E1/2 of NW1/4; thence North to the Northwest corner of E1/2 of NW1/4, thence east along section line to P.O.B.

Part of W1/2 of SW1/4 described as follows:

5 acres north of paved road and south of R.R. at their intersection

5 acres in NE corner of NE1/4 of NW1/4
1 acre in SE corner of NW1/4 of NE1/4;
NE1/4 of NE1/4;

S1/2 of NE1/4;
North 690 feet of SE1/4 of NW1/4 lying East of Egg and Butter Road;
E1/2 of E1/2 of NE1/4 of SE1/4;
1 acre in NE corner of SE1/4 of SE1/4

SEC ISP Rng AC

13 22S 1W 60

13 22S 1W 5

14 22S 1W 5

14 22S 1W 137
572.7

PARCEL 2

DESCRIPTION

AN UNDIVIDED 1/2 INTEREST IN THE FOLLOWING (SHELBY COUNTY):

Lot 9, Willow Island Subdivision
Tax Parcel I.D. #58-30-6-13-0-001-029
Henry & Lilla Bristow

SEC ISP Rng Acres

13 22S 1E 0.5

DESCRIPTION	SEC	ISR	RNG	AC
PARCEL 3				
AN UNDIVIDED 1/2 INTEREST IN THE FOLLOWING (SHELBY COUNTY):				
Begin NW cor. NE1/4 of NW1/4, S 1 deg. 51 min. E 1,238.17'; thence S 78 deg. 57 min. W along S boundary of Highway 70 104.71' to POB; thence S 11 deg. 3 min. E to Town Branch; thence W along branch 223.74'; thence: N11 deg. 3 min. W approximately 750' to S boundary of Highway 70; thence N 78 deg. 57 min. E along Highway 210' to POB Tax Parcel I.D. #58-21-7-26-2-001-053 Henry & Lilla Bristow	26	215	1W	3.5

PARCEL 4				
AN UNDIVIDED 1/2 INTEREST IN THE FOLLOWING (SHELBY COUNTY):				
Begin at intersection of N ROW of Highway 25 and E ROW of Goodwin St; thence Northwesterly along E boundary of Goodwin St. 155' to POB; thence continue along road 72' to Nickerson Lot; thence right along Nickerson Lot 71.5' to Bristow Lot; thence right along Bristow Lot 76' to Sullivan Lot; thence right 72' along Sullivan Lot to POB Tax Parcel I.D. #58-21-7-25-2-001-009 Henry & Lilla Bristow	25	215	1W	0.1

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PARCEL 5
729 ORCHARD ROAD, BIRMINGHAM

DESCRIPTION	Sec	Tsb	Rng	Acres
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AN UNDIVIDED 1/2 INTEREST IN THE
FOLLOWING (JEFFERSON COUNTY):

Lot 11-A according to a resurvey
of Lot 11, Gravett's Addition to
Huffman, said resurvey recorded in
Map Book 110, Page 63, in the
Probate Office of Jefferson County,
Alabama

PARCEL 6
522 SO. 56TH STREET, BIRMINGHAM

AN UNDIVIDED 1/2 INTEREST IN THE
FOLLOWING (JEFFERSON COUNTY):

Part of the West half of SE 1/4 of
Section 21, Township 17, Range 2
West, described as beginning on the
West line of 56th Street South
(formerly Mattie Street or 55th
Street) 220 feet South of its
intersection with the Southerly
line of 5th Avenue South (formerly
known as First Avenue, South) which
point of beginning is also the South-
east corner of Lot 4, Block 1, Wood-
lawn Realty Company's Sixth Addition,
as recorded in Map Book 8, Page 66,
in the Probate Office of Jefferson
County, Alabama; run thence in a
Westerly direction and along the
South line of said Lot 4, 140 feet;
thence Southerly and parallel with
56th Street 100 feet to the North-
west corner of Lot 7, Block 1,
Woodlawn Realty Company's Sixth
Addition; thence run in an Easterly
direction and along the North line
of said Lot 7, 140 feet to the West
line of 56th Street; thence in a
Northerly direction and along the
West line of 56th Street 100 feet
to the point of beginning.

DESCRIPTION	Sec	Isd	Rdg	Acres
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AN UNDIVIDED 1/2 INTEREST IN THE FOLLOWING (JEFFERSON COUNTY):

Lot 4, Block 1 Woodlawn Realty Company's Sixth Addition to Woodlawn as recorded in Map Book 8, Page 66 in the Probate Office of Jefferson County, Alabama.

AN UNDIVIDED 1/2 INTEREST IN THE FOLLOWING (JEFFERSON COUNTY):

Lot 6, in Block 195, according to the present plan and survey of the City of Birmingham made by Elyton Land Company.

AN UNDIVIDED 1/2 INTEREST IN THE FOLLOWING (JEFFERSON COUNTY):

A tract of land situated in the S.E. 1/4 of the S.W. 1/4 and the N.E. 1/4 of the S.W. 1/4 of Section 32, Township 16 South, Range 2 West Jefferson County, Alabama, begin more particularly described as follows:

Commence at the Northeast corner of said S.E. 1/4 of the S.W. 1/4 and run 125.91 feet Southerly along the east line thereof to a point on the Northerly Right of Way of a 30 foot

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PARCEL 2
740 CLOW ROAD, BIRMINGHAM
BRISLOW TRUCKING

Acres

Ros

Isd

Sec

DESCRIPTION

(Continued)

wide County Road; thence 160° 45' 30" to the right and run 44.51 feet in a Northwesterly direction along said Northwesterly Right of Way to the P.C. (point of curve) of a curve to the right having a central angle of 5° 08' 45" and a radius of 1097.69 feet; thence continue Northwesterly for 98.59 feet along the arc of said curve and said Northwesterly Right of Way to a point; thence continue Northwesterly for 109.23 feet in the tangent to said curve and along said Northwesterly Right of Way to the P.C. (point of curve) of a curve to the left having a central angle of 55° 52' 45" and a radius of 165.00 feet; thence continue Northeasterly and Southwesterly for 160.92 feet along the arc of said curve and said Northwesterly Right of Way to the P.T. (point of tangent) of said curve; thence continue Southwesterly for 114.25 feet in the tangent to said curve and along said Northwesterly Right of Way to the P.C. (point of curve) of a curve to the right having a central angle of 23° 17' 17" and a radius of 255.00 feet; thence continue Southwesterly for 103.65 feet along the arc of said curve and said Northwesterly Right of Way to the point of beginning; thence run 87° 12' 43" to the right (angle measured to tangent) and run 143.77 feet in a Northwesterly direction to the Southeast corner of a cemetery; thence 89° 53' to the right and run in a Northwesterly direction along the westerly line of said cemetery 148.54 feet to the Northwest corner of said cemetery; thence 2° 35' 30" to the right and run in a Northwesterly direction 476.42 feet to a point; thence 90° 00' to the left and run in a westerly direction 300.00 feet; thence 90° 00' to the left and run in a southerly

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PARCEL 2
740 CLOW ROAD, BIRMINGHAM
BRISTOW TRUCKING

Sec Tsd Rng Acres

DESCRIPTION

(Continued)

direction 773.64 feet to a point on the
94° 51' 03" to the left in a North-
westerly direction a distance of
43.29 feet to the P.C. (point of curve)
of a curve to the right having a
radius of 3065.00 feet and a central
angle of 6° 15' 03"; the P.T. (point
of tangent) of said curve; thence run
along the tangent to said curve in an
Easterly direction 77.83 feet to the
265.00 feet and a central angle of 2°
05' 13"; thence run in the arc of said
curve and along the Northerly Right
of Way line of said county road
9.22 feet to the point of beginning.

STATE OF ALA. SHELBY CO.
STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED
1985 JUN 13 PM 6:15
Thomas A. Shouder, Jr.
JUDGE OF PROBATE

Rec. 4250
Ind 100
4350

