

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

JACK H. FALLETTA and PATRICIA  
A. FALLETTA,

Plaintiffs,

vs.

LOTTIE KIDD DAVIS, ELOISE KIDD,  
DELORES KIDD, RAYMOND HUGULEY,  
MARY C. KIDD, DANIEL KIDD, JOHN  
KIDD, RUBY KIDD, CAROL ANN  
DOBIE, CYNTHIA PELZER, CHARLES  
CRUTCHFIELD, TIMOTHY F. KIDD,

Defendants.

CIVIL ACTION NUMBER

CV 99-712

Inst # 1999-37154

09/03/1999-37154  
09:57 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
006 CRH 21.00

**NOTICE OF LIS PENDENS**

Notice is hereby given that Jack H. Falletta and Patricia A. Falletta commenced a civil action against Lottie Kidd Davis, Eloise Kidd, Delores Kidd, Raymond Huguley, Mary C. Kidd, Daniel Kidd, John Kidd, Ruby Kidd, Carol Ann Dobie, Cynthia Pelzer, Charles Crutchfield and Timothy F. Kidd, individuals, on the 1st day of September, 1999, in which Plaintiffs claim a right, title, interest, or claim in and to the following described property:

See Exhibit A attached hereto and incorporated herein as if set out in full.

In the aforesaid civil action Plaintiffs allege, among other things, the following:

On or about February 19, 1999, Plaintiffs executed a Lots or Other Unimproved Land Sales Contract, a copy of which is attached hereto as Exhibit B and incorporated herein by reference. Said contract provided that sellers, the heirs of the Metter Shepherd Estate, would sell exclusively to

Plaintiffs all of the property described on Exhibit A attached hereto and located in Shelby County,  
Alabama.

Each of the named defendants, as heirs of the Estate of Metter Shepherd, individually  
executed an agreement to sell the subject property.

Plaintiffs are seeking specific performance of the sale of the property by the heirs of the  
Estate of Metter Shepherd.

Dated this the 2<sup>nd</sup> day of Sept, 1999.

  
LAURIE BOSTON SHARP BOS012  
Attorney for Plaintiffs

OF COUNSEL:

Najjar Denaburg, P.C.  
2125 Morris Avenue  
Birmingham, Alabama 35203  
(205) 250-8400

EXHIBIT "A"  
LEGAL DESCRIPTION

## PARCEL NO. 3:

Commence at the SW corner of Section 14, Township 21 South, Range 1 East; thence run East along the South line of said Section 14, a distance of 1725.03 feet to the East right of way line of Alabama State Highway #145; thence turn an angle of 75 degrees 59 minutes to the left and run along said right of way line a distance of 1235.28 feet to the point of beginning; thence continue in the same direction along said right of way line a distance of 90.00 feet to the P.C. of a right of way curve; thence continue along said right of way curve (whose Delta angle is 23 degrees 04 minutes 46 seconds to the right, radius is 3719.72 feet, tangent distance is 759.47 feet, length of arc is 1498.34 feet); thence turn an angle of 142 degrees 55 minutes 14 seconds to the right from a tangent line of said right of way curve and run South a distance of 1595.79 feet; thence turn an angle of 104 degrees 00 minutes to the right and run a distance of 684.73 feet to the point of beginning. Situated in the NE 1/4 of the SW 1/4 and the SE 1/4 of the SW 1/4 of Section 14, Township 21 South, Range 1 East, Shelby County, Alabama.

## PARCEL NO. 3-A:

Commence at the SW corner of Section 14, Township 21 South, Range 1 East; thence run East along the South line of said Section 14, a distance of 1775.03 feet to the East right of way line of Alabama State Highway #145; thence turn an angle of 75 degrees 59 minutes to the left and run North along the East right of way line of said Highway a distance of 1235.28 feet; thence turn an angle of 90 degrees to the right and run a distance of 284.73 feet to the point of beginning; thence continue in the same direction a distance of 400.00 feet; thence turn an angle of 76 degrees 00 minutes to the right and run South a distance of 584.36 feet to the pool line of Law Reservoir contour line elevation 397.00 feet; thence turn an angle of 103 degrees 45 minutes to the right and run along said contour line a distance of 85.12 feet; thence turn an angle of 23 degrees 08 minutes to the right and run along said contour line a distance of 85.73 feet; thence turn an angle of 15 degrees 30 minutes to the left and run along said contour line a distance of 100.00 feet; thence turn an angle of 54 degrees 35 minutes 49 seconds to the right and run a distance of 590.73 feet to the point of beginning. Situated in the SE 1/4 of the SW 1/4 of Section 14, Township 21 South, Range 1 East, Shelby County, Alabama.

EXHIBIT A



# LOTS OR OTHER UNIMPROVED LAND SALES CONTRACT

Form Approved by: Birmingham Association of REALTORS®; Birmingham, Alabama  
July 24, 1993 (Previous forms obsolete)

Date: 2-19-99

The undersigned Purchaser(s) JACK + PATSY FALLETTA hereby agrees to purchase and

the undersigned Seller(s) METTER SHEPHERD - ESTATE A hereby agrees to sell the following

described lot(s) or other unimproved land and appurtenances thereto (the "Property") situated in the City of \_\_\_\_\_  
County of SHALEY Alabama, on the terms stated below:

Address SB-20-6-14-0-000-008 - SS-98-4945 and legally described as Lot \_\_\_\_\_ Block \_\_\_\_\_  
Survey 2 1/2 ACRES Hwy 145 Map Book \_\_\_\_\_ Page \_\_\_\_\_

1A. THE PURCHASE PRICE Shall be \$ 90,000. payable as follows:  
Earnest Money, receipt of which is hereby acknowledged by the Agent..... \$ 1,000.  
Cash on closing this sale..... \$ 89,000

1B. CONTINGENCIES RELATING TO PURCHASE: (State here any contingencies relating to Purchaser's obligation to purchase the Property - e.g., financing, zoning or subdivision approvals, environmental audits, subsurface or soils tests and examinations, or availability of utilities. If "none", so state.)

2. AGENCY DISCLOSURE: The listing company is: \_\_\_\_\_  
The selling company is: DOWN SOUTH REALTY

The listing company is: (Two blocks may be checked) ☐ An agent of the seller. ☐ An agent of the buyer.  
☐ An agent of both the seller and buyer and is acting as a limited consensual dual agent.  
☐ Assisting the ☐ buyer ☐ seller (check one or both) as a transaction broker.

The selling company is: (Two blocks may be checked) ☐ An agent of the seller. ☒ An agent of the buyer.  
☐ An agent of both the seller and buyer and is acting as a limited consensual dual agent.  
☒ Assisting the ☒ buyer ☒ seller (check one or both) as a transaction broker.

Purchaser's Initials JF PF Contingent on Seller's Initials JF  
remaining signatures legible secured

3. EARNEST MONEY & PURCHASER'S DEFAULT: Seller and Purchaser hereby direct the Listing Company to hold the earnest money in trust until this Contract has been accepted and signed by all parties, at which time the earnest money will be promptly deposited into the escrow account of the Listing Company. In the event Purchaser fails to carry out and perform the terms of this Contract, the earnest money shall be forfeited as liquidated damages at the option of Seller, provided Seller agrees to the cancellation of this Contract. If this Contract does not close and the earnest money is to be turned over to Seller or refunded to Purchaser pursuant to this Contract, Seller and Purchaser agree to execute a written release to the Listing Company affirming the proper disposition of the earnest money. In the event either Purchaser or Seller claims the earnest money without the agreement of the other party, the Listing Broker may interplead the disputed portion of the earnest money into court, and shall be entitled to deduct or recover from the earnest money for court costs, attorney fees and other expenses relating to the interpleader. When the earnest money is a check and the check is returned by a financial institution as unpaid, Seller has the right to void this Contract without further recourse on the part of Purchaser.

4. TITLE INSURANCE: Seller agrees to furnish Purchaser a standard form owner's title insurance policy at Seller's expense, issued by a company qualified to insure titles in Alabama, in the amount of the purchase price, insuring Purchaser against loss on account of any defect or encumbrance in the title, subject to exceptions herein, including paragraph 8 below; otherwise, the earnest money shall be

The publisher is not engaged in rendering legal, accounting or other professional service. This form is published as a service to real estate professionals and an explanation of its various provisions should be obtained from the appropriate professional. Because of varying state and local laws, competent legal or other advice should be secured before using any form.

Lots or Other Unimproved Land Sales Contract

Page 1 of 3

EXHIBIT B



ed. In the event both Owner's and Mortgagee's title policies are obtained at the time of closing, the total expense of procuring the policies will be divided equally between Seller and Purchaser, even if the Mortgagee is the Seller.

**SURVEY:** Purchaser ☒ does ☐ does not require a survey by a registered Alabama land surveyor of Purchaser's choosing. Unless otherwise agreed herein, the survey shall be at Purchaser's expense. (NOTE: Lender may require a survey)

**6. PRORATIONS:** Ad valorem taxes, as determined on the date of closing, insurance transferred, accrued interest on mortgage(s) assumed, and fire district dues, if any, are to be prorated between Seller and Purchaser as of the date of delivery of the deed, and any existing escrow deposits shall be credited to Seller. **UNLESS OTHERWISE AGREED HEREIN, ALL AD VALOREM TAXES EXCEPT MUNICIPAL ARE PRESUMED TO BE PAID IN ARREARS FOR PURPOSE OF PRORATION; MUNICIPAL TAXES, IF ANY, ARE PRESUMED TO BE PAID IN ADVANCE.**

**7. CLOSING & POSSESSION DATES:** The sale shall be closed and the deed delivered on or before Closing, except Seller shall have a reasonable length of time within which to perfect title or cure defects in the title to the Property. Possession is to be given on delivery of the deed if the Property is then vacant; otherwise, possession shall be delivered on Closing, at \_\_\_\_\_: \_\_\_\_\_ ☐ a.m. ☐ p.m.

**8. CONVEYANCE:** Seller agrees to convey the Property to Purchaser by GENERAL warranty deed (check here ☐ if Purchasers desire title as joint tenants with right of survivorship), free of all encumbrances except as permitted in this Contract. Seller and Purchaser agree that any encumbrances not herein excepted or assumed may be cleared at the time of closing from sales proceeds. **THE PROPERTY IS SOLD AND IS TO BE CONVEYED SUBJECT TO ANY MINERAL AND/OR MINING RIGHTS NOT OWNED BY SELLER AND SUBJECT TO PRESENT ZONING CLASSIFICATION, A 1, AND ☒ IS ☐ IS NOT LOCATED IN A FLOOD PLAIN, AND UNLESS OTHERWISE AGREED HEREIN, SUBJECT TO UTILITY EASEMENTS SERVING THE PROPERTY, RESIDENTIAL SUBDIVISION COVENANTS AND RESTRICTIONS, AND BUILDING LINES OF RECORD, PROVIDED THAT NONE OF THE FOREGOING MATERIALLY IMPAIR USE OF THE PROPERTY FOR ITS INTENDED PURPOSES.**

**9. CONDITION OF THE PROPERTY:** NEITHER SELLER NOR ANY SALESPERSON MAKES ANY REPRESENTATIONS OR WARRANTIES REGARDING CONDITION OF THE PROPERTY EXCEPT TO THE EXTENT EXPRESSLY AND SPECIFICALLY SET FORTH HEREIN. Purchaser has the obligation to determine, either personally or through or with a representative of Purchaser's choosing, any and all conditions of the Property material to Purchaser's decision to buy the Property, including without limitation, subsurface condition, including the presence or absence of sinkholes, mining activity, wells, or buried tanks and other objects; soils condition; utility and sewer or septic tank availability and condition. Except as otherwise stated in this Contract, Purchaser accepts the Property in its present "as is" condition.

Purchaser's Initials JF GH

Seller's Initials \_\_\_\_\_

**10. DISCLAIMER:** Seller and Purchaser acknowledge that they have not relied upon advice or representations of Broker (or Broker's associated salesperson(s)) relative to (i) the legal or tax consequences of this Contract and the sale, purchase or ownership of the Property; (ii) zoning or rezoning; (iii) subdividing; (iv) soils or subsurface conditions; (v) the availability of utilities or sewer service; (vi) the investment or resale value of the Property; (vii) projections of income or operating expenses; or (viii) any other matters affecting their willingness to sell or purchase the Property on terms and price herein set forth. Seller and Purchaser acknowledge that if such matters are of concern to them in the decision to sell or purchase the Property, they have sought and obtained independent advice relative thereto.

Purchaser's Initials JF GH

Seller's Initials \_\_\_\_\_

**11. SELLER WARRANTIES** that Seller has not received notification from any lawful authority regarding any assessments, pending assessments, pending public improvements, repairs, replacements, or alterations to the Property that have not been satisfactorily made. Seller warrants that there is no unpaid indebtedness on the Property except as described in this Contract. These warranties shall survive the delivery of the deed.

**12. HAZARDOUS SUBSTANCES:** Seller and Purchaser expressly acknowledge that the Broker(s) have not made an independent investigation or determination with respect to the existence or nonexistence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances or gases in, on, or about the Property, or for the presence of underground storage tanks. Any such investigation or determination shall be the responsibility of Seller and/or Purchaser and Broker(s) shall not be held responsible therefor.

The publisher is not engaged in rendering legal, accounting or other professional service. This form is published as a service to real estate professionals and an explanation of its various provisions should be obtained from the appropriate professional. Because of varying state and local laws, competent legal or other advice should be secured before using any form.

**IGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA):** In the closing of this transaction, Seller and Purchaser comply with the FIRPTA and the regulations promulgated thereunder by the IRS.

**SELECTION OF ATTORNEY:** Purchaser and Seller hereby ☒ do ☐ do not agree to share the fees of a closing attorney. Purchaser and Seller acknowledge and agree that such sharing may involve a potential conflict of interest and they may be required to execute an affidavit at closing acknowledging their recognition and acceptance of same. The parties further acknowledge that they have a right to be represented at all times in connection with this Contract, and the closing, by an attorney of their own choosing at their own expense.

**5. BROKERAGE FEE/COMMISSION:** THE COMMISSION PAYABLE TO THE LISTING OR SELLING BROKER IN THIS TRANSACTION IS PER PRIOR WRITTEN AGREEMENT BETWEEN THE BROKERS AND THEIR RESPECTIVE CLIENTS OR CUSTOMERS AND IS NOT SET BY THE BIRMINGHAM ASSOCIATION OF REALTORS®, INC., BUT IN ALL CASES IS NEGOTIABLE BETWEEN THE BROKERS AND THEIR RESPECTIVE CLIENTS OR CUSTOMERS..

**6. NON-REFUNDABLE FEES:** Purchaser and Seller acknowledge that in the event this Contract is canceled or not closed, any fees paid will be non-refundable.

**7. FACSIMILE OR COUNTERPART SIGNATURES:** This Contract may be executed by either party or both parties by telecopy or facsimile, and shall be binding upon the party so executing it upon the receipt by the other party of the signature.

**8. LITIGATION:** In the event either party institutes litigation to enforce its rights under this Contract, the prevailing party shall be entitled to recover its litigation costs, including court costs and reasonable attorney fees.

**9. ADDITIONAL PROVISIONS** set forth on the attached addendum(s) A and signed by all parties are hereby made a part of this Contract.

**10. ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between Purchaser and Seller regarding the Property, and supersedes all prior discussions, negotiations and agreements between Purchaser and Seller, whether oral or written. Neither Purchaser, Seller, nor Broker or any sales agent shall be bound by any understanding, agreement, promise, or representation concerning the property, expressed or implied, not specified herein.

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF YOU DO NOT UNDERSTAND THE LEGAL EFFECT OF ANY PART OF THIS CONTRACT, SEEK LEGAL ADVICE BEFORE SIGNING.

\_\_\_\_\_  
Witness to Purchaser's Signature

\_\_\_\_\_  
Witness to Seller's Signature

Jack Fallick 3-1-99  
Purchaser (Date)  
Jack Fallick 3-1-99  
Purchaser (Date)

Seller 09/03/1999-37154 (Date)  
09:57 AM CERTIFIED

Seller \_\_\_\_\_ (Date)  
SHELBY COUNTY JUDGE OF PROBATE

006 CRH 21.00

**EARNEST MONEY:** Final receipt is hereby acknowledged of the earnest money as herein above set forth

BROKER: Dorinda South ☐ CASH ☒ CHECK BY: Frank DATE: 3-1-99

The publisher is not engaged in rendering legal, accounting or other professional service. This form is published as a service to real estate professionals and an explanation of its various provisions should be obtained from the appropriate professional. Because of varying state and local laws, competent legal or other advice should be secured before using any form.