

UNITED STATES BANKRUPTCY COURT
For the Northern District of Alabama
Southern Division

RE: HOWARD R. LUTZ

CASE NUMBER: 00-03539-BGC-7

I, RICHARD K. MAUK, ACTING CLERK of Bankruptcy Court in and for said District, do hereby certify that the attached copy of NOTICE OF INTENT TO SELL AND MOTION TO SELL FREE AND CLEAR OF ALL LIENS, INTEREST OR OTHER ENCUMBRANCES; AND ORDER GRANTING TRUSTEE'S MOTION TO SELL in the case of HOWARD LUTZ debtors, Case No. 00-03539-BGC-7 has been compared with the original thereof and that it is a complete and correct copy of such original as it appears of record and on file in my office.

In testimony whereof I have hereunto set my hand at Birmingham, Alabama in said District, this 14th day of DECEMBER, 2000.

RICHARD K. MAUK
Acting Clerk of Bankruptcy Court

By: Diane O. Burt
Deputy Clerk

[Seal of the U.S. Bankruptcy Court]
Date of issuance: DECEMBER 14, 2000

12/21/2000-44490
01:58 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
016 NMB 56.00

Inst # 2000-44490

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

In the Matter of:

HOWARD LUTZ

SSN: [REDACTED]

Debtor(s).

}
}
}

Case No: 00-03539-BGC-7

ORDER

This matter came before the Court on Monday, November 20, 2000 at 1:30 p.m., for a hearing on the following:

TRUSTEE'S NOTICE OF INTENT AND MOTION TO SELL PROPERTY OF THE ESTATE BY PRIVATE SALE FREE AND CLEAR OF ALL LIENS AND OTHER INTERESTS AND OBJECTIONS, IF ANY

Proper notice of the hearing was given and appearances were made by the following:

MAX C. POPE, JR., ATTORNEY FOR TRUSTEE

It is therefore **ORDERED, ADJUDGED and DECREED** that:

BASED ON THE ARGUMENTS OF COUNSEL AND THE PLEADINGS, THE TRUSTEE'S MOTION IS GRANTED AND THE SALE IS APPROVED.

Dated: DEC 01 2000



BENJAMIN G. COHEN

United States Bankruptcy Judge

Courtroom Deputy: BONNIE FILASEK

Recorder: LINDA KIRKPATRICK

Date Prepared: 11/21/2000

ENTERED

DEC 01 2000

Clerk, U.S. Bankruptcy Court
Northern District of Alabama

29

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

FILED

00 OCT 30 AM 10:51

U.S. BANKRUPTCY COURT
N.D. OF ALABAMA

In Re:

HOWARD R. LUTZ
dba T.A.B OF ALABAMA, INC.
dba SUMMER BREEZE RV PARTS &
SERVICE
dba LUBE IT UP #1
dba LUBE IT UP #2

Bankruptcy Case No.

00-03539-BGC-7

Debtor.

(Chapter 7 Case)

**NOTICE OF INTENT TO SELL AND MOTION
TO SELL FREE AND CLEAR OF ALL
LIENS, INTEREST OR OTHER ENCUMBRANCES**

Comes now the Trustee, Andre' M. Toffel, by and through his attorney, and gives notice pursuant to the Federal Rules of Bankruptcy Procedure 2002 and 6004 of intent to sell certain property free and clear of liens, interests and/or other encumbrances pursuant to Title 11 United States Code Section 363(f)(2)(3) and/or (4) as described below, and moves this Court for an order authorizing the Trustee to sell the property and as grounds for said motion, states the following:

1. Andre' M. Toffel is the duly appointed Trustee in the above-styled case.
2. The Trustee proposes to sell all of the estate's right, title and interests in the property located at 117 Kensington, Lane Alabaster, Shelby County, Alabama and more particularly described in Exhibit A attached and hereby incorporated by reference.
3. The Trustee proposes to sell the estate's interest property described above free and clear of any and all mortgages, liens, interests and/or other encumbrances by private sale to James E. Oliver and Amy B. Oliver for \$154,400.00 subject to the terms and conditions as set forth. The "property

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is sold as is, where is". The Trustee gives no guarantee or warranty as to the goods sold at said auction.

4. The personal property to be sold is subject to the following liens, mortgages or other interests:

- A. Mortgage given by Howard R. Lutz and Sammie Kay Lutz to First Federal Bank, a Federal Savings Bank, in the amount of \$24,300.00, dated January 16, 1997 filed January 22, 1997, and recorded in Instrument # 1997-226, in the Probate Office of Shelby County, Alabama.
- B. Mortgage given by Howard R. Lutz and Sammie K. Lutz to Admiral Funding, L.L.C. in the amount of \$49,350.00, filed January 11, 1999, and recorded Instrument #1999-1199 in the Probate Office of Shelby County, Alabama and being last transferred and assigned to Green Tree Financial Corp-Alabama, by Instrument # 1999-19644 in the Probate Office of Shelby County, Alabama.
- C. First Federal Bank, a Federal Savings Bank, has filed Adversary Proceeding Number AP 00-00281 which seeks to reform a mortgage which it claims was inadvertently released. Defendant, Trustee, Andre' M. Toffel, has filed a Third Party Complaint adding Conseco Financial Services, formerly known as Green Tree Financial Corporation of Alabama as a party to each parties interest in the property.
- D. Exceptions to the sale and sold subject to:
 - 1. Thirty foot building line from Kensington Lane, ten foot water

line easement along the Northerly lot line and fifteen foot utility easement along the Northwesterly lot line, as show on recorded plat.

2. Restrictions appearing of record in Instrument #1995-3878, amended by Instrument #1995-9508, further amended by Instrument #1997-15575; further amended by Instrument #1998-38707 and further amended by Instrument #2000-2330.
 3. Restrictions as show on recorded map(s).
 4. Right of way to Southern Natural Gas Corp. by instrument recorded in Deed Book 90, Page 445 and Deed Book 90, Page 333.
 5. Right of way granted to Alabaster Water and Gas Board by instrument recorded in Deed Book 124, Page 255.
 6. Oil, gas and mineral lease recorded in Deed Book 337, Page 885.
5. IF YOU CLAIM A LIEN ON OR INTEREST IN, ANY OF THE PROPERTY AND IT IS NOT SET FORTH HEREIN ABOVE YOU SHOULD IMMEDIATELY MAKE SUCH LIEN OR INTEREST KNOWN TO THE TRUSTEE AND THE COURT. THIS PROPOSED SALE MAY EFFECT YOUR RIGHTS UNDER TITLE 11 UNITED STATES CODE SECTION 363.
6. All liens, mortgages, or other interests shall attach to the proceeds of the sale. The Trustee reserves the right to contest the validity, priority, extent of any such claim, lien or other interest.

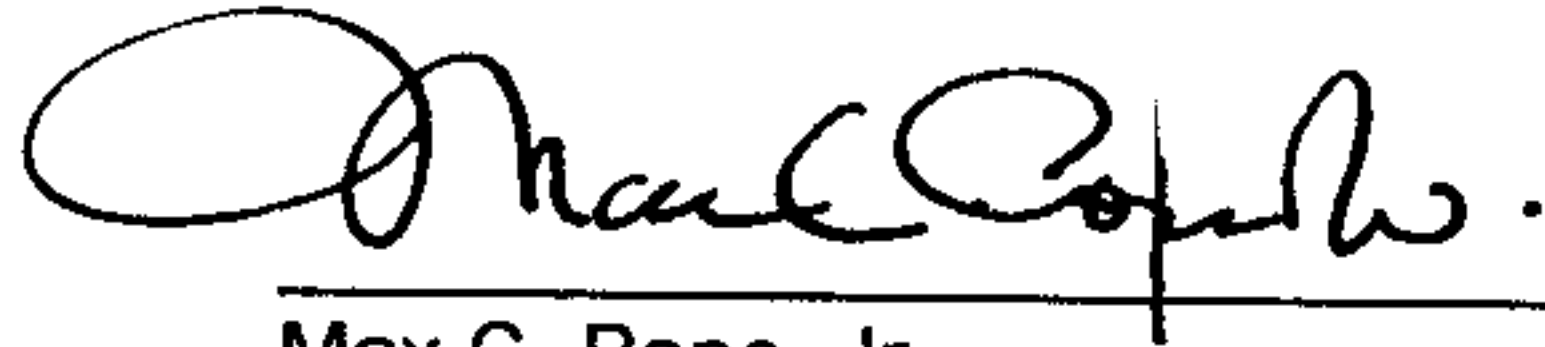
WHEREFORE, upon the above stated premises, the Trustee moves this Court to:

- A. Issue an ORDER authorizing the sale free and clear of all liens by private sale as proposed above pursuant to Title 11 United States Code Section 363(f).
- B. Pursuant to Rule 6004(f)(2)(3) and/or (4) of the Federal Rules of Bankruptcy Procedure and section 363(f), authorize the Trustee to execute any instruments necessary or ordered by the Court to effectuate the transfer as described herein;
- C. Order that if there is a dispute among the lienholders or Trustee on the Property as to the validity, amount, or priority of any such lien or claim, such sale is approved and confirmed on the basis requested, and the Trustee is directed to hold the net proceeds, subject to payment upon proper application for professional fees and other administrative expenses pursuant to Title 11 United States Code Sections 330, 506, 724 or any other applicable code sections and to bring an adversary proceeding to resolve said disputes; and
- D. Order that the mortgages, liens, and/or interest of the parties named herein attached to the net proceeds of the sale in accordance with their interest or relation priority as to be established by applicable state and federal law subject to further order of this Court.
- E. Order the Trustee to pay all closing costs and other costs as set forth in the Sales Contract attached as Exhibit B.
- F. Order the Trustee to hold the net sale proceeds subject to further Order of

this Court.

- G. Grant such further, additional or other relief as may be necessary to effectuate the sale of the assets.

Dated this the 30th day of October, 2000.

A handwritten signature in black ink, appearing to read "Max C. Pope, Jr.", written over a horizontal line.

Max C. Pope, Jr.,
Attorney for Andre' M. Toffel, Trustee
P. O. Box 370991
Birmingham, Alabama 35237
(205) 327-5566

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing **Notice of Intent to Sell and Motion to Sell Free and Clear of All Liens, Interest or Other Encumbrances** has this 20th day of October, 2000, been mailed via U.S. Mail, postage-prepaid or by hand delivery to all those listed below:

Valrey W. Early, III,
Bankruptcy Administrator
United States Bankruptcy Court
1800 5th Avenue North
Room 120
Birmingham, Alabama 35203-0211

James and Amy B. Oliver
4924 Cheshire Lane
Birmingham, Alabama 35235

Jill Williams
Realty Place
P.O. Box 949
Trussville, Alabama 35173

Nick L. Glenos
Awtrey Realty
5330 Stadium Trace Parkway
Birmingham, Alabama 35244

Alan B. Jaffe
Attorney for the Debtor
Jaffe & Erdberg
2020 12th Avenue North
Birmingham, Alabama 35234

Stephen Porterfield
Attorney for First Federal Bank
Sirote & Permutt
P.O. Box 55727
Birmingham, AL 35255-5727

Conseco Financial Services
c/o The Corporation Company
2000 Interstate Park Drive
Montgomery, Alabama 36109



Max C. Pope, Jr.

EXHIBIT A

Lot 30, according to the Map and Survey of Sterling Gate, Sector I, as recorded in Map Book 19, Page 90, in the Probate Office of Shelby County, Alabama.

EXHIBIT A

Exhibit B

FINANCED SALES/VA CONTRACT

Form Approved by: Birmingham Association of REALTORS®: Birmingham, Alabama
July 24, 1998 (Previous forms obsolete)

Date: 10-9-00

The undersigned Purchaser(s) James E + Arny B Oliver hereby agrees to purchase and
(please print names)

the undersigned Seller(s) Andre M. Toffel, Trustee hereby agrees to sell the following
(please print names) MCPS

described real estate, together with all improvements, shrubbery, plantings, fixtures and appurtenances (the "Property") situated in
the City of Calhoun, County of Shelby, Alabama, on the terms stated below:

Address 117 Kensington Lane and legally described as Lot _____ Block _____

Survey Stealing Hole Map Book 19 Page 90

1. THE PURCHASE PRICE Shall be \$ 154,400.00 960 ABO payable as follows:

Earnest Money, receipt of which is hereby acknowledged by the Agent 960 ABO \$ 500
Balance of cash downpayment due from the Purchaser at closing 960 ABO \$ 7500 7220
Mortgage Loan Amount 960 ABO \$ 152,000 146,68
TOTAL PURCHASE PRICE 154,400 \$ 160,000 154,40

(a) LOAN CONTINGENCY: This contract is contingent upon Purchaser obtaining approval of a Coner
loan in the amount of \$152,000 (excluding any financed loan costs) amortized over a period of 30
years at an interest rate not to exceed 8.14. Purchaser agrees to immediately apply for said loan and make every
reasonable effort to obtain approval.

(b) LOAN CLOSING COSTS AND PREPAID ITEMS: Loan Discount, if necessary for obtaining the required loan, not
to exceed 0 % of the amount of the approved loan, shall be paid by ☐ Purchaser ☐ Seller. All other loan closing
costs and prepaid items are to be paid by the Purchaser unless herein excepted. Seller's obligation to pay (or to reimburse
Purchaser) for any loan closing costs is contingent upon the sale closing.

(c) IF FHA OR VA FINANCING IS UTILIZED, THE "FHA/VA AMENDATORY CLAUSE ADDENDUM" MUST
BE ATTACHED.

2. AGENCY DISCLOSURE: The listing company is: Quintessence
The selling company is: Realty Place

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 960 ABO

Seller's Initials AMT, Trustee
CANNOT be
paid by Trustee

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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.

Exhibit B

3. **EARNEST MONEY & PURCHASER'S DEFAULT:** Seller and Purchaser hereby direct the Listing Broker, Trust, 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 Broker. 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. In the event either Purchaser or Seller claim the earnest money without the agreement of the other party, Seller or Broker holding the earnest money may interplead the disputed portion of the earnest money into court, and shall be entitled to deduct 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 the contract without further recourse on the part of Purchaser. JEO ak Trust MRP

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

5. **SURVEY/TERMITE BOND:**

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)

Purchaser ☒ does ☐ does not require a termite bond. If a bond is required and Seller has an existing bond, the bond may be transferred at ☐ Purchaser's ☐ Seller's expense. If a new bond is required, the cost shall be at ☐ Purchaser's ☒ Seller's expense.

Purchaser ☒ does ☐ does not require a Wood Infestation Report. If required by Purchaser, Lender or Termite Company, the cost of a Wood Infestation Report shall be at ☐ Purchaser's ☒ Seller's expense.

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.** JEO ABO and

7. **CLOSING & POSSESSION DATES:** The sale shall be closed and the deed delivered on or before 10-31-2000, 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 11-03-2000 at 12:00 ☐ a.m. ☒ p.m. NOTE: If Purchaser is to be given possession prior to closing, or if Seller is to remain in possession after closing, it is recommended that the parties enter into a written occupancy agreement. JEO ABO MRP

8. **CONVEYANCE:** Seller agrees to convey the Property to Purchaser by General Trustee Deed 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, Residential, 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 RESIDENTIAL 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 SET FORTH HEREIN. Purchaser has the obligation to determine any and all conditions of the Property material to Purchaser's decision to purchase the Property, including, without limitation, the condition of the heating, cooling, plumbing and electrical systems and any built-in appliances, and the roof and the basement, including leaks therein; the

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size and area of the Property; construction materials, including floors; structural condition; utility and sewer or septic tank availability and condition; subsurface conditions, including radon and other potentially hazardous materials and/or gases; and any matters affecting the character of the neighborhood. Purchaser shall have the opportunity to determine the condition of the Property in accordance with "A", "B", or "C" below, as selected by the parties. NOTE: LENDERS OR PUBLIC AUTHORITIES MAY REQUIRE CERTAIN INVESTIGATIONS SUCH AS TERMITE INSPECTION AND SEPTIC TANK INSPECTION. PURCHASER'S INSPECTIONS SHOULD INCLUDE SUCH MATTERS IN ANY EVENT.

"MARK EITHER "A", "B", "C(i)", OR "C (i)" AND "C(ii)". CHOICE(S) MUST BE INITIALED BY BOTH PARTIES TO BE PART OF THIS CONTRACT."

☐ A. Seller shall not be required to make any repairs to the Property whatsoever under this Contract. Purchaser has inspected the Property, either personally or through others of Purchaser's choosing, and accepts the Property in its present "as is" condition, including ordinary wear and tear to the closing.*

Purchaser's Initials _____

Seller's Initials _____

☐ B. Purchaser has inspected the Property, either personally or through others of Purchaser's choosing, and, without relying on any representation or warranty from Seller or Broker or any salesperson or any printed or written description of the Property, accepts the Property in its present "as is" condition, including ordinary wear and tear to closing, except that Seller agrees (subject to any dollar limits below) to (i) make any repairs required by the lending institution; (ii) deliver the heating, cooling, plumbing and electrical systems and any built-in appliances in normal operating condition at the time of closing; and (iii) perform the following: _____.

REPAIRS REQUIRED OF SELLER UNDER PARAGRAPH (B) SHALL NOT EXCEED \$ _____. If such repairs exceed this amount and Seller refuses to pay the excess, Purchaser may pay the excess or (if not prohibited by Purchaser's Lender) accept the Property with the limited repairs or accept the specified ceiling amount at closing as a reduction of the purchase price, and this sale shall be closed as scheduled, or Purchaser may cancel this Contract by notifying Seller in writing within _____ hours of Purchaser's receipt of Seller's notice of refusal to pay the excess.

Purchaser's Initials _____

Seller's Initials _____

☒ C(i). Purchaser requires additional inspections of the Property at Purchaser's expense. Promptly after Seller's acceptance of this Contract, Purchaser shall either personally or through others of Purchaser's choosing, inspect and investigate the Property. If such inspections reveal conditions unsatisfactory to the Purchaser ("Defects"), Purchaser may, at Purchaser's option, (i) terminate this Contract or (ii) request Seller to correct the Defects. Purchaser shall exercise this option by written notice to Seller delivered to Seller on or before 5:00 P.M. on * See Below, which notice shall specify the Defects that Seller is requested to correct or that caused Purchaser to elect to terminate this Contract. If Purchaser elects to terminate this Contract, Seller shall promptly refund the Earnest Money. If Purchaser instead requests Seller to correct the Defects, Seller shall notify Purchaser within 2 days of receipt of such request whether Seller will correct the Defects and Seller shall have a reasonable time to correct the Defects prior to closing. If Seller elects not to correct the Defect, Purchaser shall notify Seller, by written notice delivered to Seller within 48 hours of receipt of Seller's refusal to correct the Defects, that Purchaser elects to terminate this Contract and receive a refund of the Earnest Money or to waive the Defects and proceed to close the sale. Purchaser's failure to notify Seller of any such Defects or to terminate this Contract, as herein provided, shall conclusively be deemed acceptance of the Property "as is," subject to c(ii) below, including ordinary wear and tear to the closing. * On or before 5 days from acceptance of this offer.

Purchaser's Initials JEO ABO

Seller's Initials AMT, Trustee

☒ C(ii). In addition to any repairs agreed to by Seller and Purchaser pursuant to C(i) above, Seller agrees (subject to any dollar limits below) to (a) make any repairs required by the lending institution and (b) deliver the heating, cooling, plumbing and electrical systems and any built-in appliances in normal operating condition at the time of closing. **ANY REPAIRS REQUIRED OF SELLER UNDER THIS PARAGRAPH C(ii) (EXCLUSIVE OF ANY ADDITIONAL REPAIRS AGREED TO BY SELLER UNDER C(i) ABOVE) SHALL NOT EXCEED \$ 250.**

Purchaser's Initials JEO ABO

Seller's Initials _____

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*NOTE: "Ordinary wear and tear" as used in "A" and "C", shall not be deemed to include material failure of the heating, cooling, plumbing and electrical system or built-in appliances. If such a system or appliance suffers material failure after acceptance under "A" or "C" above but prior to closing and Seller refuses to pay for any repairs reasonably required to restore it to an operating condition at least as good as previously existing, Purchaser may proceed with the closing or cancel the Contract and recover the earnest money by notifying Seller in writing of the cancellation promptly after Purchaser's receipt of Seller's notice of refusal to pay for such repairs; provided that notice of cancellation must, in any event, be received prior to closing.

Purchaser has the right and the responsibility to walk through and inspect the Property prior to closing and notify Seller immediately if the Property is not in the condition agreed under "A", "B", or "C", whichever one has been selected by the parties. After closing, all conditions of the property are the responsibility of Purchaser.

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) structural condition of the Property, including condition of the roof and basement; (iii) construction materials; (iv) the nature and operating condition of the electrical, heating, air conditioning, plumbing, water heating systems and appliances; (v) the availability of utilities or sewer service; (vi) the character of the neighborhood; (vii) the investment or resale value of the Property; (viii) subsurface conditions, including radon and other potentially hazardous materials and/or gases; or (ix) any other matters affecting their willingness to sell or purchase the Property on the 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

Geo ABD

Seller's Initials AMT, Trustee

11. **SELLER WARRANTS** 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. **FIRE/SMOKE/GAS DETECTORS:** Purchaser shall satisfy himself/herself that all applicable federal, state and local statutes, ordinances or regulations concerning fire/smoke/gas detectors have been met. Upon closing or after taking possession of the Property, whichever occurs first, Purchaser shall be solely responsible for compliance with such laws.

13. **RISK OF LOSS:** Seller agrees to keep in force sufficient hazard insurance on the Property to protect all interests until this sale is closed and the deed delivered. If the Property is destroyed or materially damaged between the date hereof and the closing, and Seller is unable to restore it to its previous condition prior to closing, the Purchaser shall have the option of canceling this Contract and recovering the earnest money or accepting the Property in its damaged condition provided that notice of cancellation must be received prior to closing. If Purchaser elects to accept the Property in its damaged condition, any insurance proceeds otherwise payable to Seller by reason of such damage shall be applied to the balance of the purchase price or otherwise be payable to Purchaser.

14. **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.

15. **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 BROKER, AND THEIR RESPECTIVE CLIENTS OR CUSTOMERS.

7% Commission to be split 50/50 between Aubrey R.E. and Realty Place, LLC. Aubrey R.E. shall not be paid at closing, but only by order of Bankruptcy Court. Realty Place, LLC.

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Geo ABD

Closing, but only

by order of Bankruptcy Court. Realty Place, LLC.

July 24, 1998
(previous forms obsolete)

VA AMENDATORY CLAUSE

ADDENDUM

***Not applicable except for VA Financing.**

The terms and conditions of this Addendum form a part of that certain Financed Sales Contract dated ____/____/____ between the undersigned Purchaser(s) and Seller(s).

"It is expressly agreed that notwithstanding any other provisions of this contract, the purchaser shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the purchaser has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration, or a Direct Endorsement lender setting forth the appraised value of the property of not less than \$ _____. The purchaser shall have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the property. The purchaser should satisfy himself/herself that the price and condition of the property are acceptable."

Witness to Purchaser's Signature

Witness to Seller's Signature

Purchaser (Date)

Purchaser (Date)

Seller (Date)

Seller (Date)

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16. **PERSONAL PROPERTY:** Any personal items remaining with the Property shall be at no additional cost to Purchaser; shall not add to the value of the Property; shall be in "as is" condition unless otherwise agreed to herein; shall be unencumbered at the time of closing; and shall be only that which is currently on the premises and included on the itemized list attached hereto (said list to be specific as to description and location of such items).

17. **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.

18. **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.

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

20. **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.

Bill Williams
Bill Williams
Witness to Purchaser's Signature

Paul R. Craft
Witness to Seller's Signature

James E. Oliver *10/9/2000*
Purchaser (Date)
Amy B. Oliver *10-9-00*
Purchaser (Date)
Andre M. Toffel, as Trustee *10-9-00*
Seller (Date)

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

☐ CASH

☐ CHECK

BROKER: _____ BY: _____ DATE: _____

ADDENDUM "A"

the terms and conditions of this Addendum form a part of that certain contract dated 10-8, 2000, between the undersigned Purchaser(s) and Seller(s) for the purchase of property located at 117 Kensington Lane

This offer to be accepted on or before 10/18/2000 or it shall become null & void.

Purchasers are pre-approved with Scott Nelson, First Federal, 969-3334.

Sellers to pay 1/2 attorney, 1/2 title, terminate bond & letter, pro-rated taxes & fire dues & commission.

Purchaser to pay all remaining closing cost & prepaids.

Items to remain: stove, dishwasher, ~~blinds & ceiling fans~~

This contract subject to Purchasers closing their current home (4934 Chesline Lane). Closing is scheduled for Oct 27th with pre-approved buyers.

- This Contract is subject to Bankruptcy Court approval.
- The Seller makes no warranty whatsoever to the condition or fitness of this property. Property is sold "as is".
- Closing and delivery possession shall take place within ten (10) days after a final order approving this sale by the Bankruptcy Court.

Jill Williams
Jill Williams
Witness to Buyer(s) Signature(s)

James E. Oliver 10/9/2000
Buyer (Date)

Amy B. Oliver 10-9-00
Buyer (Date)

John M. Hoff as Trustee 10-19-00
Inst. # 2000-44490 Seller (Date)

Seller (Date)

12/21/2000-44490
01:58 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
016 HMB 56.00

Inst. # 2000-44490