Prepared by Chris Heinss of
Balch and Bingham

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Shelby Cnty Judge of Probate, AL
08/02/2010 09:26:28 AM FILED/CERT

AFFIDAVIT OF GREGG THOMPSON REGARDING LEASE TO PURCHASE AGREEMENT AND AGREEMENT FOR OCCUPANCY PRIOR TO CLOSING INVOLVING THE PROPERTY LOCATED AT 2645 BUCKBOARD ROAD, BIRMINGHAM, ALABAMA 35244 IN SHELBY COUNTY, ALABAMA

STATE OF ALABAMA)

COUNTY OF SHELBY)

PERSONALLY APPEARED before me, an officer duly authorized by law to administer oaths, GREGG THOMPSON, who after first being duly sworn states:

1. My name is Gregg Thompson, and I am over the age of twenty-one (21). This Affidavit is based upon my personal knowledge.

2. During or around February 28, 2009, my wife, Anne Thompson, and I entered into a Lease to Purchase Option Agreement ("Option Agreement") and Agreement for Occupancy Prior to Closing ("Occupancy Agreement") with owners James Melton and Rhonda Melton regarding the property located at 2645 Buckboard Road, Birmingham, Alabama 35244 in Shelby County, Alabama.

3. Neither my wife nor I received an original copy of the Option Agreement or the Occupancy Agreement after we signed them, and we do not know if an original copy still exists. If an original copy exists, we do not know where it is located.

4. I saw, signed, and am familiar with the original Option Agreement, and a true and accurate copy of the original of that document is attached to this Affidavit as Exhibit A.

5. I saw, signed, and am familiar with the original Occupancy Agreement, and a true and accurate copy of the original of that document is attached to this Affidavit as Exhibit B.

FURTHER AFFIANT SAYETH NOT

[Signature on Next Page]

DATED: 7/29/10

Gregg Thompson

SWORN and SUBSCRIBED to before me on this, the 29 day of July,

2010.

Notary Public

My Commission Expires: 5-1-11

RE/MAX First Choice

LEASE TO PURCHASE OPTION AGREEMENT

This Lease to Purchase Option Agreement ("Option to Purchase Agreement") is made on 2/28/09 [month, day, year] between Jared Rhonda Melton (the "Seller/Landlord") and Greg + Annie thompson (the Buyer/Tenant")

WHEREAS, Seller/Landlord is the fee owner of certain real property being, lying and situated in Shelby County, Alabama, such real property having a street address of 2645 Buckboard Rd (the "Property").

WHEREAS, Seller/Landlord and Buyer/Tenant have together executed a prior lease agreement, the subject of which is the aforementioned Property (the "Lease Agreement").

NOW, THEREFORE, for and in consideration of the covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller/Landlord hereby grants to Buyer/Tenant an exclusive option to purchase the aforementioned "Property." The parties hereto hereby agree as follows:

1. **OPTION TERM**. The option to purchase period commences on 2/28/09 [month, day, year], and expires at 11:59 PM 3/16/11 [month, day, year].

2. **NOTICE REQUIRED TO EXERCISE OPTION**. To exercise the Option to Purchase, the Buyer/Tenant must deliver to the Seller/Landlord written notice of Buyer/Tenant's intent to purchase. In addition, the written notice must specify a valid closing date. The closing date must occur before the original expiration date of the Lease Agreement, or the date of the expiration of the Option to Purchase Agreement designated in paragraph 1, whichever occurs later.

3. **OPTION CONSIDERATION**. As consideration for this Option to Purchase Agreement, the Buyer/Tenant shall pay the Seller/Landlord a non-refundable fee of $ 15,000, receipt of which is hereby acknowledged by the Seller/Landlord. This amount shall be credited to the purchase price at closing if the Buyer/Tenant timely exercises the option to purchase, provided that the Buyer/Tenant: (a) is not in default of the Lease Agreement, and (b) closes the conveyance of the Property. The Seller/Landlord shall not refund the fee if the Buyer/Tenant defaults in the Lease Agreement, fails to close the conveyance, or otherwise does not exercise the option to purchase.

4. **PURCHASE PRICE**. The total purchase price for the Property is $ 310,000. Provided that the Buyer/Tenant timely executes the option to purchase, is not in default of the Lease Agreement, and closes the conveyance of the Property, the Seller/Landlord shall credit towards the purchase price at closing the sum of $ 1,200.00 from each monthly lease payment that the Buyer/Tenant timely made. However, the Buyer/Tenant shall receive no credit at closing for any monthly lease payment that the Seller/Landlord received after the due date specified in the Lease Agreement.

5. **EXCLUSIVITY OF OPTION**. This Option to Purchase Agreement is exclusive and non-assignable and exists solely for the benefit of the named parties above. Should Buyer/Tenant

Exhibit A

attempt to assign, convey, delegate, or transfer this option to purchase without the Seller/Landlord's express written permission, any such attempt shall be deemed null and void.

6. **CLOSING AND SETTLEMENT**. Seller/Landlord shall determine the title company at which settlement shall occur and shall inform Buyer/Tenant of this location in writing. Buyer/Tenant agrees that closing costs in their entirety, including any points, fees, and other charges required by the third-party lender, shall be the sole responsibility of Buyer/Tenant. The only expense related to closing costs apportioned to Seller/Landlord shall be the pro-rated share of the ad valorem taxes due at the time of closing, for which Seller/Landlord is solely responsible.

7. **FINANCING AVAILABILITY**. SELLER/LANDLORD MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE AVAILABILITY OF FINANCING REGARDING THIS OPTION TO PURCHASE. BUYER/TENANT IS SOLELY RESPONSIBLE FOR OBTAINING FINANCING IN ORDER TO EXERCISE THIS OPTION.

8. **FINANCING DISCLAIMER**. The parties acknowledge that it is impossible to predict the availability of obtaining financing towards the purchase of this Property. Obtaining financing shall not be held as a condition of performance of this Option to Purchase Agreement. The parties further agree that this Option to Purchase Agreement is not entered into in reliance upon any representation or warranty made by either party.

9. **REMEDIES UPON DEFAULT**. If Buyer/Tenant defaults under this Option to Purchase Agreement or the Lease Agreement, then in addition to any other remedies available to Seller/Landlord at law or in equity, Seller/Landlord may terminate this Option to Purchase by giving written notice of the termination. If terminated, the Buyer/Tenant shall lose entitlement to any refund of rent or option consideration. For this Option to Purchase Agreement to be enforceable and effective, the Buyer/Tenant must comply with all terms and conditions of the Lease Agreement.

10. **COMMISSION**. No real estate commissions or any other commissions shall be paid in connection with this transaction.

11. **RECORDING OF AGREEMENT**. Buyer/Tenant shall not record this Option to Purchase Agreement on the Public Records of any public office without the express and written consent of Seller/Landlord.

12. **ACKNOWLEDGMENTS**. The parties are executing this Option to Purchase Agreement voluntarily and without any duress or undue influence. The parties have carefully read this Option to Purchase Agreement and have asked any questions needed to understand its terms, consequences, and binding effect and fully understand them and have been given an executed copy. The parties have sought the advice of an attorney of their respective choice if so desired prior to signing this Option to Purchase Agreement.

13. **TIMING**. Time is of the essence in this Option to Purchase Agreement.

14. **GOVERNING LAW AND VENUE**. This Option to Purchase Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Alabama. The parties further agree that the venue for any and all disputes related to this Option to Purchase shall be Shelby County, Alabama.

15. **OPTION TO PURCHASE CONTROLLING**. In the event a conflict arises between the terms and conditions of the Lease Agreement and the Option to Purchase Agreement, the Option to Purchase Agreement shall control.

16. **ENTIRE AGREEMENT; MODIFICATION**. This document sets forth the entire agreement and understanding between the parties relating to the subject matter herein and supersedes all prior discussions between the parties. No modification of or amendment to this Option to Purchase Agreement, nor any waiver of any rights under this Option to Purchase Agreement, will be effective unless in writing signed by the party to be charged.

SELLER/LANDLORD:

Sign: ______________________

Print: Rhonda Melton

SELLER/LANDLORD:

Sign: ______________________

Print: J. Wesley Melton

BUYER/TENANT:

Sign: [redacted]

Print: [redacted]

BUYER/TENANT:

Sign: [redacted]

Print: [redacted]

AGREEMENT FOR OCCUPANCY PRIOR TO CLOSING

Form approved by the Birmingham Association of REALTORS®, Inc.
March 29, 2006 (*Previous forms obsolete and are no longer approved*)

WHEREAS, the undersigned SELLER(S) James & Rhonda Melton and BUYER(S) Greg & Anne Thompson have entered into a contract dated 2/28/09, for the sale and purchase of the real property (the "Sales Contract") commonly known or described as 2645 Buckboard Rd B'ham, Alabama (the "Property") which contract is scheduled to close on or before March 16, 2011 Buyer desires to take possession of and to occupy the Property before the closing of the sale and Seller has agreed to allow Buyer to take possession of and to occupy the Property prior to closing on the following terms and conditions:

NOW, THEREFORE, SELLER AND BUYER hereby agree as follows:

1. **POSSESSION:** Seller hereby grants permission to Buyer to take possession of the Property effective March 18, 2009 and to occupy same until the close of the Sales Contract, or until the right of possession is earlier terminated in accordance with this Agreement.

2. **CONDITION OF PROPERTY**: Buyer acknowledges inspection of the Property and hereby accepts the Property as is and as conforming to the requirements of the Sales Contract (except as to matters of title or survey, which shall be determined as provided in the said Sales Contract), subject only to the following (if any):

   ____
   ____
   ____

3. **RENT:** Buyer shall pay to Seller for the occupancy of said Property the sum of $ 1,600.00 per month.

4. **HOLDOVER:** If the Sales Contract is not closed as scheduled or as extended, through no fault of Seller, Buyer agrees to vacate the Property within 30 days after service of a written notice from Seller. Any holding over thereafter shall create a day-to-day tenancy with a rent of $ 50 per day. Except as to daily rent and tenancy, all other covenants and conditions herein contained shall remain in full force and effect during any holdover period.

5. **MAINTENANCE:** Buyer shall keep the Property and yards clean, sanitary, and in good order and repair during the term hereof and, if the said Sales Contract is not closed, Buyer shall surrender the Property in the same condition it was in prior to occupancy, reasonable wear and tear excepted.

6. **UTILITIES AND ASSESSMENTS:** During the term of this occupancy, Buyer shall be responsible for all utilities consumed and assessments that accrue on the Property. The Buyer and Seller shall reach an agreement regarding which utilities should be put in Buyer's name before Closing, but even if the utilities remain in Seller's name, Buyer shall pay to Seller the amount due for the utilities consumed and the assessments that accrue on the Property during the occupancy.

7. **ALTERATIONS TO PROPERTY:** Until Closing, no alterations or changes whatsoever shall be made by Buyer to the Property, unless approved by Seller in writing prior to commencement of such alteration or improvement.

8. **HOLD HARMLESS:** Buyer shall save and hold Seller harmless from any and all claims, demands, damages or liabilities arising out of Buyer's occupancy of the Property or otherwise caused or permitted by Buyer, Buyer's family, agents, servants, employees, guests and invitees.

Exhibit B

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9. **RISK OF LOSS (INSURANCE):** Buyer shall obtain prior to occupancy a copy of a certificate of insurance coverage and shall maintain during the term of this Agreement public liability insurance naming both Seller and Buyer as co-insureds in an amount of not less than $__________________ for injury to one person; $__________________ for injury to more than one person; and $________________ for property damage. If permitted by his/her insurer, Seller may agree to retain hazard and liability insurance on the Property until Closing. If Seller's insurer requires that Seller's policy be converted to a Landlord's Policy as a result of this Agreement, Buyer agrees to pay any additional premium cost. Buyer acknowledges that Buyer is solely responsible for insuring any personal property on the Property.

10. **USE:** The Property is to be used as a residence only, and only by Buyer and his/her immediate family. No pet except One Cat shall be kept on or about the Property without Seller's prior written consent. Buyer shall comply with any law or ordinance in the use of the Property, shall not permit waste or nuisance upon or about the Property, and shall not make any additions or alterations to the Property without the prior written consent of Seller.

11. **SECURITY DEPOSIT:** In addition to the earnest money paid under the Sales Contract, Buyer has deposited with Seller's agent $ 15,000 as a security deposit. Seller may use therefrom such amounts as are reasonably necessary to remedy defaults in the payment of rent hereunder, to repair damages caused by Buyer, or to clean the Property, if necessary, upon the termination of Buyer's tenancy. The balance of the security deposit, if any, shall be mailed to Buyer's last known address within fourteen (14) days of surrender of Property if the sale does not close. If the Sales Contract closes, said security deposit shall be returned or credited to Buyer at the Closing.

12. **ATTORNEY'S FEES AND COSTS:** Buyer agrees to pay all costs, including a reasonable fee for an attorney, in any legal action that Seller may institute to enforce the terms of this Agreement, including eviction of the Buyer from the Property.

13. **ASSIGNMENT:** The right to occupy the Property as granted herein is personal to Buyer and any attempt to assign, transfer, or hypothecate the same shall be null and void.

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 Buyer's Signature(s)	Buyer (Date)
Witness to Buyer's Signature(s)	Buyer 7/1/09 (Date)
Witness to Seller's Signature(s)	Seller (Date)
Witness to Seller's Signature(s)	Seller (Date)

SECURITY DEPOSIT: Receipt is hereby acknowledged of the security deposit as hereinabove set forth:
______Cash ______Check