

Prepared by and Return to: Austin Law Firm, P.A. 6928 Cobblestone Drive Suite 100 Southaven, MS 38672 662-890-7575 MS Bar #3412 File No: S10-11-0644	Grantors Address: P. O. Box 150 Southaven, MS 38671 Home: <u>N.A.</u> Work: <u>662-893-1115</u>	Grantees Address: 921 Fairway Pointe Cove East Hernando, MS 38632 Home: <u>N.A.</u> Work: <u>901-647-1424</u>
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WARRANTY DEED

JOHN D. WHEELER
GRANTORS

TO

JEROME GOWEN, JR. AND CHERYL O'KELLEY GOWEN,
GRANTEES

FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable considerations, the receipt of all of which is hereby acknowledged, John D. Wheeler, does hereby sell, convey, and warrant unto Jerome Gowen, Jr. and Cheryl O'Kelley Gowen, as tenants by the entirety with full rights of survivorship and not as tenants in common, the land lying and being situated in DeSoto County, Mississippi, described as follows, to-wit:

Lot 320, Fairway Pointe, located in Section 6, Township 3 South, Range 7 West, DeSoto County, Mississippi, as recorded in Plat Book 97, Page 7, in the office of the Chancery Clerk of DeSoto County, Mississippi.

The warranty in this deed is subject to rights of ways and easements for public roads and public utilities, to building, zoning, subdivision and health department regulations in effect in DeSoto County, Mississippi.

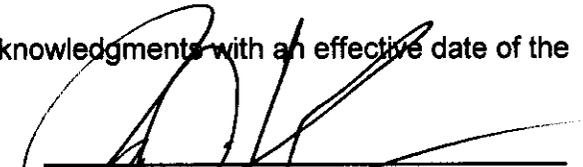
Subject to subdivision restrictive covenants, easements and setback lines as recorded in Book 97, Page 7 in the office of the Chancery Clerk of DeSoto County, Mississippi.

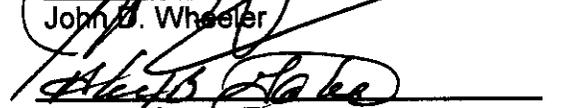
Taxes for 2011 have been prorated, and possession is given with this deed.

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Alex B. Gates, as Trustee of the United States Bankruptcy Court for the Northern District of Mississippi, does hereby join in the sale of the above mentioned property as authorized by an Order to Trustee to Assume Executory Contracts and to Join in Sale of Property Free and Clear of Liens and Alleged Liens Pursuant to Bankruptcy Code Sections 105 and 363 entered in the Chapter 7 Bankruptcy Case No. 11-14861 on November 29, 2011. A copy of said Order is attached hereto as Exhibit "A".

Executed as of the date set forth in the below respective acknowledgments with an effective date of the 9 day of December, 2011.

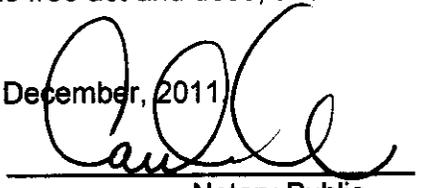


John D. Wheeler


Alex B. Gates, Trustee

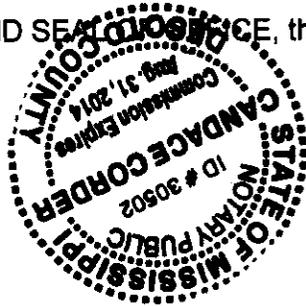
STATE OF MISSISSIPPI:
COUNTY OF DESOTO:

PERSONALLY APPEARED before me, the undersigned authority at law, in and for the State and County aforesaid, the within named JOHN D. WHEELER, who acknowledged that he signed and delivered the above and foregoing Deed on the day and year therein mentioned, as his free act and deed, and for the purposed therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 9 day of December, 2011.


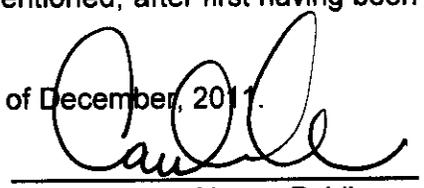
Notary Public

My commission expires:



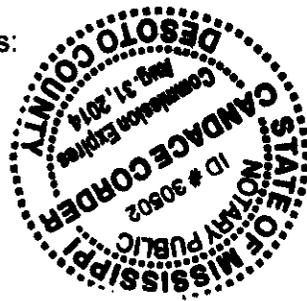
STATE OF MISSISSIPPI:
COUNTY OF DESOTO:

PERSONALLY APPEARED before me, the undersigned authority at law, in and for the State and County aforesaid, the within named ALEX B. GATES, who acknowledged that he is the Trustee of the United States Bankruptcy Court for the Northern District of Mississippi and that in said representative capacity he executed the above and foregoing Deed on the day and year therein mentioned, after first having been duly authorized so to do.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 5 day of December, 2011.


Notary Public

My commission expires:



**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

IN RE: JOHN D. WHEELER

CHAPTER 7

DEBTOR

CASE NO: 11-14861-DWH

**ORDER TO TRUSTEE TO ASSUME EXECUTORY CONTRACTS
AND TO JOIN IN SALE OF PROPERTY
FREE AND CLEAR OF LIENS AND ALLEGED LIENS
PURSUANT TO BANKRUPTCY CODE §§ 105 AND 363**

THIS CAUSE came on for hearing on Debtor's Motion for entry of an Order from the Court to trustee to assume executory contracts [dk16] and to join in sale of property free and clear of liens and alleged liens[dk14] pursuant to Bankruptcy Code §§ 105 and 363.

Subsequent to the filing of its motion, Debtor was forced to amend one of its contracts for the purchase and sale of real estate due to the fact that the subject property did not appraise for the agreed purchase price. A copy of a portion of this appraisal is attached to this order and labeled "Exhibit A."

The Court being fully advised in the premises and finding that a failure to grant such order will cause harm to secured and judgment creditors, does hereby make the following findings of fact and order as follows:

1. That Debtor is the owner of real property known and described as Lot 320 Fairway Pointe Subdivision, 921 Fairway Pointe Cove E, Hernando, Miss. The property has a value in excess of \$170,000 in its present condition; however the property is in need of repairs.

2. That the DeSoto County Tax Collector has a lien against the property for ad valorem taxes of approximately \$1,849.77, representing current year's taxes and the

amount needed to redeem the property from previous tax sales..

3. That Citizens National Bank holds a first deed of trust on the Property securing a note in the approximate principal amount of \$148,357.59.

4. That in addition to the above mortgage and tax liens, the following default judgments have been enrolled against debtor and are a lien on the property. As these are default judgments they are subject to dispute:

- Judgment lien in favor of BancorpSouth Bank in the amount of \$136,345.33 enrolled on February 25, 2011.
- Judgment lien in favor of BancorpSouth Bank in the amount of \$19,413.92 enrolled on February 25, 2011.
- Judgment lien in favor of H.W. Jenkins Company in the amount of \$178,948.51 enrolled on May 17, 2011.
- Judgment lien in favor of Hernando Lumber and Millwork in the amount of \$26,392.72 enrolled on May 4, 2011.

5. That Debtor has entered into an executory contract for the sale of Lot 320 Fairway Point, 921 Fairway Cove E, Hernando, Mississippi, to Jerry and Terry Gowan for the sale of this tract for the sum of \$187,900. Due to a failure of this property to appraise for that amount this contract has been amended to reflect a sales price of \$180,000. This contract of sale was made by debtor prior to filing for bankruptcy protection and was made pursuant to an offer of purchase made through buyers' broker, Bob Leigh and Associates. The terms include the following:

- Seller to pay 3.5 percent of cost of home towards closing and other costs;
- Property to close by November 18, 2011 (this closing date has been extended to Dec . 2, 2011);
- Contract contingent on purchaser's closing and sale of current home;
- Seller to make general repairs necessary to put home in "new" condition, with

holes patched and painted and squeaking subfloor repaired;

- Seller to build a covered patio 13.5 feet deep by 19 feet wide with brick columns and shingle roof to match house, to include ceiling fan, light, and gutters
- A broker's real estate commission of 6 percent must be paid.

6. To facilitate this sale, Wheeler Homes LLC entered into a contract with Debtor contemporaneously with the contract for purchase and sale. The basic terms of this contract are:

- Wheeler Homes LLC is to perform all work agreed to by Debtor in the contract for the purchase and sale of real estate;
- Wheeler Homes LLC will provide purchasers with an HBW-210 home warranty covering all construction of house at closing, said warranty to be listed on the settlement statement and paid for out of closing proceeds;
- For performing necessary repairs Wheeler Homes is to be paid its actual direct costs of repairs plus 15 percent of said itemized costs to cover indirect costs, overhead, supervision, and labor.¹ These repairs are to be listed on the settlement statement and paid out of closing proceeds.

7. That Wheeler Homes LLC is owned by Carmen Wheeler, wife of Debtor.

8. That although Debtor may, by virtue of his marriage to Carmen Wheeler receive some incidental benefit from the contract to repair the property this contract has no present value and had no value at the time this bankruptcy was filed. Any future value, should there be any at all, will only accrue as Wheeler Homes LLC actually performs the contract.

9. That the amended sales price of \$180,000 represents the highest price Debtor will be able to receive for the home in the immediate future and a sale of the

¹ The subject property has been used as a rental property, therefore there are numerous small repairs which need to be made to bring the property to "like new" condition.

property at this price is in the best interests of the bankruptcy estate and its creditors.

10. That the Trustee should join in the sale of the house for \$180,000, with the proceeds to be distributed as follows:

- a. Taxes are to be prorated for the current year and the real estate is to be redeemed from prior tax sales, with an estimated tax liability of \$1,849.77.
- b. Citizens National Bank is to be paid approximately \$148,357.59 in satisfaction of its mortgage.
- c. All customary legal and closing costs, a six percent sales commission, and the cost of an HBW-201 Home Warranty to be provided by Wheeler Homes LLC are to appear on the closing statement and be paid.
- d. Wheeler Homes LLC is to provide an itemized and documented list of expenses incurred in the repair and construction on the home and is to be repaid for these expenses plus an additional 15 percent of total itemized costs to cover indirect costs, overhead, supervision, and labor, subject to approval of Chapter 7 Trustee Alex B. Gates.
- e. Although none are anticipated, any remaining funds are to be paid to judgment creditors pursuant to the provisions of the law and the bankruptcy code, with judgment creditors having a lien on the remaining proceeds of sale.

11. That it is in the best interest of the bankruptcy estate for this property to be conveyed free and clear of all liens and encumbrances pursuant to Section 363(f) of the Bankruptcy Code.

12. That creditors were given notice of Debtor's motion and there was no objection.

13. That Debtors have provided this Court with a copy of a preliminary closing statement in which the distribution of funds to Wheeler Construction LLC has not yet been deducted, and the Court finds this settlement statement appears to be in order. This preliminary settlement statement is attached to this order as a

matter of public record and is labeled "Exhibit B."

IT IS THEREFORE ORDERED AND ADJUDGED, that

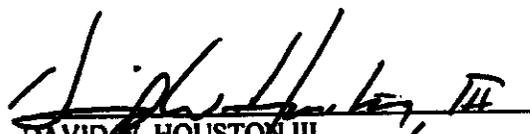
A. The trustee shall accept the executory contract between Debtor and Jerry and Terry Gowan, with the right to make reasonable and necessary modifications that the Trustee believes to be in the best interest of the bankruptcy estate;

B. The trustee shall accept the executory contract between Debtor and Wheeler Homes, LLC, with the right to make reasonable and necessary modifications that the Trustee believes to be in the best interest of the bankruptcy estate;

C. The trustee shall join in the sale of Lot 320 Fairway Pointe Subdivision, 921 Fairway Cove E, Hernando, Mississippi, and that said property shall be sold free and clear of any and all liens and encumbrances pursuant to Section 363(f) of the Bankruptcy Code; that creditors shall retain a lien on the proceeds of said sale with the proceeds distributed as described above;

D. That Debtor's attorney has acted on behalf of secured and other creditors and shall be paid a fee of \$500 from sale proceeds.

ORDERED, this the 29th day of November, 2011.


DAVID W. HOUSTON III
U.S. BANKRUPTCY JUDGE

THIS ORDER IS TENDERED BY:
w/ Frank M. Hurdle MSB#9709
Attorney for Debtor, P.O. Box 2777
Oxford, MS 38655
662-236-7800

Approved by:

w/ Alex B. Gates, Trustee
w/ permission, by Frank M. Hurdle