

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

IN RE:	:	Chapter 11
	:	
TOMMIE AND JUDITH	:	Case No. 17-51934
LINGENFELTER,	:	
	:	
Debtors.	:	
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	:	
TOMMIE AND JUDITH	:	
LINGENFELTER,	:	
	:	
Movants,	:	CONTESTED MATTER
	:	
v.	:	
	:	
HON. SAMUEL WADE	:	
MCCORD, TAX COMMISSIONER	:	
OF BIBB COUNTY; JP MORGAN	:	
CHASE BANK, N.A.; and	:	
JPMCC 2002-CIBC4 THOMASTON	:	
RETAIL, LIMITED PARTNERSHIP,	:	
	:	
Respondents.	:	
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SECOND MOTION OF DEBTORS FOR AN ORDER: (A) AUTHORIZING THE SALE OF DEBTORS' INTEREST IN 2986 AVONDALE MILL ROAD PURSUANT TO 11 U.S.C. § 363 AND F.R.B.P. 6004, FREE AND CLEAR OF LIENS, CLAIMS, AND INTERESTS, WHICH SHALL ATTACH TO PROCEEDS OF SUCH SALE; (B) DETERMINING THE VALUE OF PROPERTY SECURING LIENS AND FIXING AMOUNT OF RESULTING LIENS UNDER 11 U.S.C. § 506(a) AND F.R.B.P. 3012; (C) AUTHORIZING COMPENSATION TO INDEPENDENT REALTY OF CENTRAL GEORGIA, INC., AS REAL ESTATE BROKER FOR THE SALE; AND (D) GRANTING RELATED RELIEF

COME NOW Tommie Lingenfelter and Judith Lingenfelter, each a Debtor and Debtor-in-Possession in the above-styled Chapter 11 Bankruptcy Case (collectively, “**Debtors**” or “**Movants**”), by and through their counsel of record, and file the above-titled motion to sell 2986

Avondale Mill Road, Macon, Georgia (the “**Property**”) pursuant to 11 U.S.C. §§ 363 and 506(a) and F.R.B.P. 3012, 6004, and 9014 (the “**Motion**”), respectfully showing the following:

I. PARTIES, JURISDICTION, AND VENUE

1. On September 5, 2017 (the “**Petition Date**”), Debtors filed their voluntary petition in this Court for reorganization under Chapter 11 of the United States Bankruptcy Code. Debtors continue to operate their businesses and manage their properties as Debtors-in-Possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. No creditors’ committee has been appointed in this Case. No trustee or examiner has been appointed.

3. Respondent **JPMCC 2002-CIBC4 Thomaston Retail, Limited Partnership** (“**Thomaston**”) is a Georgia Limited partnership whose principal address is c/o LNR Partners, LLC, 1601 Washington Avenue, Suite 800, Miami Beach, Florida 33139, and may be served via first class mail upon its registered agent for service of process in Georgia, C T Corporation System, at 289 Culver Street, Lawrenceville, Georgia 30046-4805, with a notice copy to its attorney Gregory M. Taube, Esq., Nelson Mullins Riley & Scarborough LLP, 201 17th Street NW, Suite 1700, Atlanta, Georgia 30363. Thomaston is subject to the jurisdiction and venue of this Court. Thomaston claims an interest in the Property by virtue of a judgment dated August 21, 2015, entered by the Superior Court of Houston County, Georgia in the original amount of \$1,494,160.40, and recorded in the records of the Superior Court of Bibb County on June 8, 2017 at Book 1165, Page 264 (the “**Bibb County Judgment**”). Movant is seeking to avoid the Bibb County Judgment as a voidable preference in a related Adversary Proceeding filed in this case.

4. On September 22, 2017, Debtors’ filed the adversary proceeding styled *Tommie and Judith Lingenfelter v. JPMCC 2002-CIBC4 Thomaston Retail, Limited Partnership*, Case

No. 17-05047, seeking a determination of the extent, validity, and priority of the Bibb County Judgment (the “**Adversary Proceeding**”). That Adversary Proceeding is currently pending.

5. Respondent **Hon. Samuel Wade Mccord, Bibb County Tax Commissioner** (“**Tax Commissioner**”) is the duly elected and serving as Tax Commissioner of Bibb County, Georgia. Respondent may be served at 188 Third Street, Macon, Georgia 31201. He is subject to the jurisdiction and venue of this Court. He may claim an interest in the Property for *ad valorem* taxes owing on the Property.

6. Respondent JP Morgan Chase Bank, National Association (“**JP Morgan**”) is a national banking association with its principal office located at 3415 Vision Drive, Columbus, Ohio 43219. JP Morgan may be served via first class mail to its bankruptcy service center at 700 Kansas Lane, Monroe, Louisiana 71203, or by first class mail to its counsel of record McCalla Raymer Leibert Pierce, LLC, c/o Michelle Hart Ippoliti, 1544 Old Alabama Road, Roswell Georgia 30076.

7. This Motion is a Contested Matter under F.R.B.P. 9014.

8. Jurisdiction over this matter and over the Respondents is proper in the United States Bankruptcy Court for the Middle District of Georgia - Macon Division pursuant to 28 U.S.C. § 1334.

9. Venue in this matter is proper in the United States Bankruptcy Court for the Middle District of Georgia - Macon Division pursuant to 28 U.S.C. §§ 1408 and 1409.

10. This Contested Matter is a core proceeding, and may be heard and determined by this Court pursuant to 28 U.S.C. § 157(b)(1) and § 157(b)(2)(A), (B), (K), (N), and (O). The statutory predicates for the relief sought herein are 11 U.S.C. §§ 363 and 506 and F.R.B.P. 3012, 6004, and 9014.

II. BACKGROUND

11. On or about October 18, 2018, Debtors Tommy and Judith Lingenfelter, as sellers, entered into a certain Purchase and Sale Agreement (the “**Contract**”) with Colt Properties, LLC (the “**Purchaser**”) relating to the purchase and sale of the Property. A true and correct copy of the Contract, including all addendums and amendments, is attached hereto as **Exhibit A** and incorporated herein by this reference.

12. In pertinent part, the Contract provides that the Debtors shall sell the Property to the Purchaser for a purchase price of \$45,000. The closing date is set for the later of (i) November 30, 2018 or (ii) Court approval of the sale. The brokerage fee, if any, due to Independent Realty of Central Georgia, Inc. d/b/a Washburn & Associates (the “**Broker**”) is payable out of the purchase price pursuant to an Exclusive Seller Listing Agreement dated on or about January 17, 2018, between the Debtors and Broker (the “**Listing Agreement**”), and estimated to be \$2,700. A true and correct copy of the Listing Agreement is attached hereto as **Exhibit B**. The Listing Agreement and retention of the Broker was previously approved by order of this Court dated February 23, 2018. [Dkt. No. 62].

III. SUMMARY OF RELIEF REQUESTED

13. Debtors hereby move for the entry of an Order, pursuant to 11 U.S.C. §§ 363 and 506 and F.R.B.P. 3002, 3012, 6004, and 9014:

- (a) authorizing Debtors’ sale of the Property in accordance with the Contract, and authorizing and approving the sale, pursuant to 11 U.S.C. § 363 and F.R.B.P. 6004, free and clear of liens, claims, and interests, with such liens, claims, and interests, if any, to attach to the net proceeds of such sale; and

(b) authorizing disbursal of the proceeds of the sale as follows:

- i. pay liens for unpaid *ad valorem* taxes assessed against the Property through the closing of the sale;
- ii. pay all usual, customary, and reasonable costs associated with the sale as agreed in the Contract and the Listing Agreement;
- iii. pay to JP Morgan at closing the net proceeds necessary to satisfy the JP Morgan indebtedness;
- iv. pay to Debtors' undersigned attorneys at the closing the remaining proceeds, with all of such remaining proceeds to be held by Debtors' undersigned attorneys in escrow pending further order of this Court or resolution of the Adversary Proceeding;

(c) determining the value of the Property being sold securing the liens pursuant to 11 U.S.C. § 506(a);

(d) authorizing the compensation of Broker, real estate broker for Debtors; and

(e) granting other relief as set forth herein.

14. Debtors expressly reserve the right to modify the relief requested in this Motion prior to or at any hearing that may be held concerning this Motion. Debtors reserve the right to pursue any available cause of action or counterclaim against the Respondents, including, but not limited to, any cause of action to avoid a preferential transfer or fraudulent conveyance, and reserve the right to object to any claim filed or scheduled on behalf of Respondents.

A. Sale of the Property is Warranted under Section 363.

15. Debtors have determined that it would be in the best interest of the Bankruptcy Estate to sell the Property.

16. A trustee's decision to sell assets is governed by the business judgment rule, whether the sale is before or after confirmation of a plan. To obtain court approval to sell property under 11 U.S.C. § 363(b), a debtor need only show a legitimate business justification for the proposed action. See, e.g., Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983). "Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." Committee of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). When a valid business justification exists, the law vests the debtor's decision to sell property out of the ordinary course of business with a strong presumption "that in making a business decision," the debtor "acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests" of the debtor. Official Committee of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992). Accordingly, parties challenging a debtor's decision must make a showing of "bad faith, self-interest or gross negligence." Integrated Resources, 147 B.R. at 656 (internal citations omitted).

17. Ample business justification exists in the instant case for the sale of the Property to the Purchaser because Debtors believe that the sale price for the Property is at or above the market price. Additionally, the Property has been marketed for sale since January 2018, a period of ten months, which is a sufficient exposure time for the Property. Additionally, the Property

has been difficult to secure during the Case. Finally, the net proceeds from the sale of the Property are essential to Debtors' reorganization efforts.

B. The Property Should Be Sold Free and Clear of Liens, Claims, and Encumbrances.

18. Debtors request authorization to sell the Property free and clear of all interests, including, but not limited to, all liens, claims, and encumbrances, that may be asserted in, to, or against the Property, with such liens, claims, and encumbrances to attach to the proceeds from the sale of the Property to the same extent and priority that the liens of such lienholders previously attached to the Property. In accordance with 11 U.S.C. § 363(f), a debtor-in-possession may sell property under 11 U.S.C. § 363(b) "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is satisfied:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); In re Elliot, 94 B.R. 343, 354 (E.D. Pa. 1988) (because § 363(f) is written in the disjunctive, a court may approve sale "free and clear" provided that at least one of the subsections is met). At minimum, Debtors believe that they satisfy condition (3) with respect to JP Morgan and condition (4) with respect to Thomaston. That is, the Debtors' obligations to JP Morgan, if any, will be paid, in full from the closing proceeds. And the interest of Thomaston in the Property, if any, is subject to a bona fide dispute. To be sure, Thomaston's interest in the

Property is subject to avoidance because it arises from a judicial lien that was not properly perfected under Georgia law prior to the Petition Date. Therefore, as more particularly set out in the Adversary Proceeding, the Bibb County Judgment is not only subject to a bona fide dispute but, as Debtors allege in the Adversary Complaint, also avoidable under 11 U.S.C. § 547.

C. Purchaser Should be Afforded all Protections Under 11 U.S.C. § 363(m) as a Good Faith Purchaser.

19. Section 363(m) of the Bankruptcy Code provides that “the reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or lease such property in good faith.” 11 U.S.C. § 363(m).

20. Here, Purchaser is an arms-length purchaser for value. Moreover, Purchaser is not an “insider” of Debtors. Thus, Debtors request that this Court determine that Purchaser has acted in good faith and be entitled to the protections of a good faith purchaser under Section 363(m) of the Bankruptcy Code. See In re: Abbotts Diaries, 788 F.2d 143, 147 (3d Cir. 1986).

D. Payment of Sales Commissions, Closing Costs, and Other Costs Associated With the Sale.

21. Section 506(c) of the Bankruptcy Code provides that “[t]he trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim, including the payment of all ad valorem property taxes with respect to the property.”

22. Consistent with the relief requested, *supra*, Debtors request that all broker commissions or sales commissions arising out of the sale, if any, and all closing costs, if any, that have been attributed to Debtors under the Contract and the Listing Agreement be paid from the gross proceeds of the proposed sale.

E. Determination of Secured Status of Lien Holders under 11 U.S.C. § 506(a).

23. Debtors request determination of the value of the property being sold securing the liens, if any, of the named Respondents asserting liens in the assets to be sold as required under 11 U.S.C. § 506(a) and F.R.B.P. 3012.

F. Service and Notice of this Motion.

24. Debtors will serve this Motion and the Notice of Hearing thereon on (a) the United States Trustee; (b) the named Respondents; (c) other parties who have requested notice or copies of such matters in this Case; and (d) all other creditors and parties-in-interest in this Case, as directed by F.R.B.P. 2002, 6004, and 6006. Debtors shall serve any and all additional parties as the Court may direct.

G. Waiver of Stay Provision

25. Debtors believe that time is of the essence in closing the transactions by the contemplated Closing Date. Therefore, Debtors requests that the Court waive the fourteen (14) day stay of any order approving this Motion pursuant to F.R.B.P. 6004(h) and 6006(d).

WHEREFORE, Debtors respectfully request that this Motion be inquired into and that the same be GRANTED AND APPROVED; that this Court enter an order granting the relief requested herein; and that this Court grant such other and further relief as it deems just and proper.

Respectfully submitted, this 26th day of October, 2018.

[Signatures on the Following Page]

STONE & BAXTER, LLP

By:

/s/ David L. Bury, Jr.

Ward Stone, Jr.

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577 Mulberry Street, Suite 800
Macon, Georgia 31201
(478) 750-9898
(478) 750-9899 facsimile

Counsel for the Debtors

Exhibit A

Purchase and Sale Agreement

Offer Date: 10/18/2018



2018 Pri

A. KEY TERMS AND CONDITIONS

1. **Purchase and Sale.** The undersigned buyer(s) ("Buyer") agree to buy and the undersigned seller(s) ("Seller") agree to sell the property described below including all fixtures, improvements and landscaping therein ("Property") on the terms and conditions set in this Agreement.

a. **Property Identification:** Address: 2986 Avondale Mill Road

City Macon, County Bibb, Georgia, Zip Code 31216

MLS Number: Tax Parcel I.D. Number: 0150-0034

b. **Legal Description:** The legal description of the Property is [select one of the following below]:

☐ (1) attached as an exhibit hereto;

☐ (2) Condominium (attach F33 Condominium Resale Purchase and Sale Exhibit)

☒ (3) the same as described in Deed Book 1534, Page 36, et. seq., of the land records of the above county

☐ (4) Land Lot(s) of the District, Section/ C Lot, Block, Unit, Phase/Section Subdivision/Development, according to the plat recorded in Plat Book, Page, et. seq., of the land records of the above county

2. **Purchase Price of Property to be Paid by Buyer.**
\$ \$45,000

3. **Closing Costs.**
Seller's Contribution at Closing: \$ n/a

4. **Closing and Possession.**

Closing Date shall be 11/30/2018 with possession of the Property transferred to Buyer

☒ at Closing OR ☐ days after Closing at o'clock ☐ AM ☐ PM (attach F140 Temporary Occupancy Agreement)

5. **Holder of Earnest Money ("Holder").** (If Holder is Closing Attorney, F84(A) must be attached as an exhibit hereto, and F84(B) must be signed by Closing Attorney.)
Washburn & Associates

6. **Closing Attorney/Law Firm.**

Ross Schell/James Bates

7. **Earnest Money.** Earnest Money shall be paid by ☐ check ☐ cash or ☐ wire transfer of immediately available funds as follows

☒ a. \$500. as of the Offer Date.

☐ b. \$ within days from the Binding Agreement Date.

☐ c.

8. **Inspection and Due Diligence.**

a. **Due Diligence Period:** Property is being sold subject to a Due Diligence Period of N/A days from the Binding Agreement

b. **Option Payment for Due Diligence Period:** In consideration of Seller granting Buyer the option to terminate this Agreement, B (1) has paid Seller \$10.00 in nonrefundable option money, the receipt and sufficiency of which is hereby acknowledged; pl

(2) shall pay Seller additional option money of \$N/A by ☐ check or ☐ wire transfer of immediately available funds either ☐ as of the Offer Date; OR ☐ within days from the Binding Agreement Date. Any additional option money paid by Buyer to Seller ☐ shall (subject to lender approval) or ☐ shall not be applied toward the purchase price at closing shall not be refundable to Buyer unless the closing fails to occur due to the default of the Seller.

9. **Lead-Based Paint.** To the best of Seller's knowledge, the residential dwelling(s) on the Property (including any portion thereof painted fixture therein) ☒ was (attach F54 Lead-Based Paint Exhibit) OR ☐ was not built prior to 1978.

10. **Brokerage Relationships in this Transaction.**

a. **Selling Broker is** Washburn & Associates **and is:**

(1) ☐ representing Buyer as a client.

(2) ☒ working with Buyer as a customer.

(3) ☐ acting as a dual agent representing Buyer and Seller.

(4) ☐ acting as a designated agent where:

has been assigned to exclusively represent Buyer.

b. **Listing Broker is** Washburn & Associates **and is:**

(1) ☒ representing Seller as a client.

(2) ☐ working with Seller as a customer.

(3) ☐ acting as a dual agent representing Buyer and Seller

(4) ☐ acting as a designated agent where:

has been assigned to exclusively represent Seller.

c. **Material Relationship Disclosure:** The material relationships required to be disclosed by either Broker are as follows:
N/A

11. **Time Limit of Offer.** The Offer set forth herein expires at 5 o'clock p.m. on the date 10/22/2018

Buyer(s) Initials

Seller(s) Initials

THIS FORM IS COPYRIGHTED AND MAY ONLY BE USED IN REAL ESTATE TRANSACTIONS IN WHICH Dale Washburn IS INVOLVED AS A REAL ESTATE AGENT. UNAUTHORIZED USE OF THIS FORM MAY RESULT IN LEGAL SANCTIONS BEING BROUGHT AGAINST THE USER AND SHOULD BE REPORTED TO THE REALTOR BOARD.

1. Purchase and Sale.

- a. **Warranty:** Seller warrants that at the time of closing Seller will convey good and marketable title to said Property by limited warranty deed subject only to: (1) zoning; (2) general utility, sewer, and drainage easements of record as of the Binding Agreement Date and upon which the improvements do not encroach; (3) declarations of condominium and declarations of covenants, conditions and restrictions of record on the Binding Agreement Date; and (4) leases and other encumbrances specified in this Agreement. Buyer agrees to assume Seller's responsibilities in any leases specified in this Agreement.
- b. **Examination:** Buyer may examine title and obtain a survey of the Property and furnish Seller with a written statement of title objections at or prior to the closing. If Seller fails or is unable to satisfy valid title objections at or prior to the closing or any unilateral extension thereof, which would prevent the Seller from conveying good and marketable title to the Property, then Buyer, among its other remedies, may terminate the Agreement without penalty upon written notice to Seller. Good and marketable title as used herein shall mean title which a title insurance company licensed to do business in Georgia will insure at its regular rates, subject only to standard exceptions.
- c. **Title Insurance:** Buyer hereby directs any mortgage lender involved in this transaction to quote the cost of title insurance based upon the presumption that Buyer will be obtaining an enhanced title insurance policy since such a policy affords Buyer greater coverage.

2. Purchase Price to be Paid by Buyer. The Purchase Price shall be paid in U.S. Dollars at closing by wire transfer of immediately available funds, or such other form of payment acceptable to the closing attorney.

3. Closing Costs.

- a. **Seller's Contribution at Closing:** At closing, Seller shall make the referenced Seller's Monetary Contribution which Buyer may use to pay any cost or expense of Buyer related to this transaction. Buyer acknowledges that Buyer's mortgage lender(s) may not allow the Seller's Monetary Contribution, or the full amount thereof, to be used for some costs or expenses. In such event, any unused portion of the Seller's Monetary Contribution shall remain the property of the Seller. The Seller shall pay the fees and costs of the closing attorney: (1) to prepare and record title curative documents and (2) for Seller not attending the closing in person.
- b. **Items Paid by Buyer:** At closing, Buyer shall pay: (1) Georgia property transfer tax; (2) the cost to search title and tax records and prepare the limited warranty deed; and (3) all other costs, fees and charges to close this transaction, except as otherwise provided herein.
- c. **Prorations:** Ad valorem property taxes, community association fees, solid waste and governmental fees and utility bills for which service cannot be terminated as of the date of closing shall be prorated as of the date of closing. In the event ad valorem property taxes are based upon an estimated tax bill or tax bill under appeal, Buyer and Seller shall, upon the issuance of the actual tax bill or the appeal being resolved, promptly make such financial adjustments between themselves as are necessary to correctly prorate the tax bill. In the event there are tax savings resulting from a tax appeal, third party professional costs to handle the appeal may be deducted from the savings for that tax year before re-prorating. Any pending tax appeal for the year in which the Property is sold shall be deemed assigned to Buyer at closing.

4. Closing and Possession.

- a. **Right to Extend the Closing Date:** Buyer or Seller may unilaterally extend the closing date for eight (8) days upon notice to the other party given prior to or on the date of closing if: (1) Seller cannot satisfy valid title objections (excluding title objections that: (a) can be satisfied through the payment of money or by bonding off the same; and (b) do not prevent Seller from conveying good and marketable title, as that term is defined herein, to the Property); (2) Buyer's mortgage lender (even in "all cash" transactions where Buyer is obtaining a mortgage loan) or the closing attorney is delayed and cannot fulfill their respective obligations by the date of closing, provided that the delay is not caused by Buyer; or (3) Buyer has not received required estimates or disclosures and Buyer is prohibited from closing under federal regulations. The party unilaterally extending the closing date shall state the basis for the delay in the notice of extension. If the right to unilaterally extend the closing date is exercised once by either the Buyer or Seller, the right shall thereafter terminate.
- b. **Keys and Openers:** At Closing, Seller shall provide Buyer with all keys, door openers, codes and other similar equipment pertaining to the Property.

5. Holder of Earnest Money. The earnest money shall be deposited into Holder's escrow/trust account (with Holder being permitted to retain the interest if the account is interest bearing) not later than: (a) five (5) banking days after the Binding Agreement Date hereunder or (b) five (5) banking days after the date it is actually received if it is received after the Binding Agreement Date. If Buyer writes a check for earnest money and the same is deposited into Holder's escrow/trust account, Holder shall not return the earnest money until the check has cleared the account on which the check was written. In the event any earnest money check is dishonored by the bank upon which it is drawn, or earnest money is not timely paid, Holder shall promptly give notice of the same to Buyer and Seller. Buyer shall have three (3) banking days from the date of receiving the notice to cure the default and if Buyer does not do so, Seller may within seven (7) days thereafter terminate this Agreement upon notice to Buyer. If Seller fails to terminate the Agreement timely, Seller's right to terminate based on the default shall be waived.

6. Closing Attorney/Law Firm. Buyer shall have the right to select the closing attorney to close this transaction, and hereby selects the closing attorney referenced herein. If Buyer's mortgage lender refuses to allow that closing attorney to close this transaction, Buyer shall select a different closing attorney acceptable to the mortgage lender. The closing attorney shall represent the mortgage lender in any transaction in which the Buyer obtains mortgage financing (including transactions where the method of payment referenced herein is "all cash"). In transactions where the Buyer does not obtain mortgage financing, the closing attorney shall represent the Buyer.

7. **Earnest Money:** Subject to Paragraph b, Buyer is entitled to the earnest money upon the: (1) failure of the parties to enter into a binding agreement; (2) failure of any unexpired contingency or condition to which this Agreement is subject; (3) termination of this Agreement due to the default of Seller; or (4) termination of this Agreement in accordance with a specific right to terminate set forth in the Agreement. Otherwise, the earnest money shall be applied towards the purchase price of the Property at closing or if other funds are used to pay the purchase price then the earnest money shall be returned to Buyer.
- b. **Disbursement of Earnest Money:** Holder shall disburse the earnest money upon: (1) the closing of Property; (2) a subsequent written agreement of Buyer and Seller; (3) an order of a court or arbitrator having jurisdiction over any dispute involving the earnest money; or (4) the failure of the parties to enter into a binding agreement (where there is no dispute over the formation or enforceability of the Agreement). In addition, Holder may disburse the earnest money upon a reasonable interpretation of the Agreement, provided that Holder first gives all parties at least ten (10) days notice stating to whom and why the disbursement will be made. Any party may object to the proposed disbursement by giving written notice of the same to Holder within the ten (10) day notice period. Objections not timely made in writing shall be deemed waived. If Holder receives an objection and, after considering it, decides to disburse the earnest money as originally proposed, Holder may do so and send notice to the parties of Holder's action. If Holder decides to modify its proposed disbursement, Holder shall first send a new ten (10) day notice to the parties stating the rationale for the modification and to whom the disbursement will now be made. Holder shall offer to disburse the earnest money to Seller by check in the event Holder: (1) makes a reasonable interpretation of the Agreement that the Agreement has been terminated due to Buyer's default; and (2) sends the required ten (10) day notice of the proposed disbursement to Buyer and Seller. If Seller accepts the offer and Holder issues a check to Seller which is deposited by Seller, it shall constitute liquidated damages in full settlement of all claims of Seller against Buyer and the Brokers in this transaction. Holder may require Seller to sign a W-9 before issuing a check to Seller for liquidated damages of \$600 or more. Such liquidated damages are a reasonable pre-estimate of Seller's actual damages, which damages are difficult to ascertain and are not a penalty. Nothing herein shall prevent the Seller from declining the tender of the earnest money by the Holder. In such event, Holder, after giving Buyer and Seller the required ten (10) day notice of the proposed disbursement, shall disburse the earnest money to Buyer.
- c. **Interpleader:** If an earnest money dispute cannot be resolved after a reasonable time, Holder may interplead the earnest money into a court of competent jurisdiction if Holder is unsure who is entitled to the earnest money. Holder shall be reimbursed for and may deduct its costs, expenses and reasonable attorney's fees from any funds interpleaded. The prevailing defendant in the interpleader lawsuit shall be entitled to collect its attorney's fees, court costs and the amount deducted by Holder to cover Holder's costs and expenses from the non-prevailing defendant.
- d. **Hold Harmless:** All parties hereby covenant and agree to: (1) indemnify and hold Holder harmless from and against all claims, injuries, suits and damages arising out of the performance by Holder of its duties; (2) not to sue Holder for any decision of Holder to disburse earnest money in accordance with this Agreement.

8. **Inspection and Due Diligence.**

- a. **Right to Inspect Property:** Upon prior notice to Seller, Buyer and/or Buyer's representatives shall have the right to enter the Property at Buyer's expense and at reasonable times (including immediately prior to closing) to inspect, examine, test, appraise and survey Property. Seller shall cause all utilities, systems and equipment to be on so that Buyer may complete all inspections. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries and damages relating to the exercise of these rights and shall promptly restore any portion of the Property damaged or disturbed from testing or other evaluations to a condition equal to or better than the condition it was in prior to such testing or evaluation. If Buyer is concerned that the Property may have been used as a laboratory for the production of methamphetamine, or as a dumpsite for the same, Buyer should review the National Clandestine Laboratory Register – Georgia at www.dea.gov.
- b. **Duty to Inspect Neighborhood:** In every neighborhood there are conditions which different buyers may find objectionable. Buyer shall have the sole duty to become familiar with neighborhood conditions that could affect the Property such as landfills, quarries, power lines, airports, cemeteries, prisons, stadiums, odor and noise producing activities, crime and school, land use, government and transportation maps and plans. It shall be Buyer's sole duty to become familiar with neighborhood conditions of concern to Buyer. **If Buyer is concerned about the possibility of a registered sex offender residing in a neighborhood in which Buyer is interested, Buyer should review the Georgia Violent Sex Offender Registry available on the Georgia Bureau of Investigation Website at www.gbi.georgia.gov.**
- c. **Warranties Transfer:** Seller agrees to transfer to Buyer, at closing, subject to Buyer's acceptance thereof (and at Buyer's expense, if there is any cost associated with said transfer), Seller's interest in any existing manufacturer's warranties, service contracts, termite treatment and/or repair guarantee and/or other similar warranties which, by their terms, may be transferable to Buyer.
- d. **Property Sold "As-Is" Unless this Agreement is Subject to Due Diligence Period:**
- (1) **General:** Unless the Property is being sold subject to a Due Diligence Period referenced herein, the Property shall be sold "as-is" with all faults. Even if the Property is sold "as-is" Seller is required under Georgia law to disclose to the Buyer latent or hidden defects in the Property which Seller is aware and which could not have been discovered by the Buyer upon a reasonable inspection of the property. The inclusion of a Due Diligence Period herein shall: (a) during its term make this Agreement an option contract in which Buyer may decide to proceed or not proceed with the purchase of the Property for any or no reason; and (b) be an acknowledgement by Seller that Buyer has paid separate valuable consideration of \$10 for the granting of the option.
 - (2) **Purpose of Due Diligence Period:** During the Due Diligence Period, Buyer shall determine whether or not to exercise Buyer's option to proceed or not proceed with the purchase of the Property. If Buyer has concerns with the Property, Buyer may during the Due Diligence Period seek to negotiate an amendment to this Agreement to address such concerns.
 - (3) **Notice of Decision Not To Proceed:** Buyer shall have elected to exercise Buyer's option to purchase the Property unless prior to the end of any Due Diligence Period, Buyer notifies Seller of Buyer's decision not to proceed by delivering to Seller a notice of termination of this Agreement. In the event Buyer does not terminate this Agreement prior to the end of the Due Diligence Period, then: (a) Buyer shall have accepted the Property "as-is" subject to the terms of this Agreement; and (b) Buyer shall no longer have any right to terminate this Agreement based upon the Due Diligence Period.
- e. **Repairs:** All agreed upon repairs and replacements shall be performed in a good and workmanlike manner prior to closing.

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c. **Notice:** The Broker and any affiliated licensee of the Broker representing the party in a dual agency capacity, the Broker and any affiliated licensee of the Broker representing the party in a dual agency capacity, shall be authorized agents of the party and notice to any of them shall for all purposes herein be deemed to be notice to the party. Notice to an authorized agent shall not be effective unless the written notice is sent to an address, facsimile number or e-mail address of the authorized agent set forth herein (or subsequently provided by the authorized agent following the notice provisions herein). Except as provided for herein, the Broker's staff at a physical address set forth herein of the Broker or the Broker's affiliated licensees are authorized to receive notices delivered by a Delivery Service. The Broker, the Broker's staff and the affiliated licensees of the Broker shall not be authorized to receive notice on behalf of a party in any transaction in which a brokerage engagement has not been entered into with the party or in which the Broker is acting in a dual agency capacity. In the event the Broker is practicing designated agency, only the designated agent of a client shall be an authorized agent of the client for the purposes of receiving notice.

2. **Default.**

- a. **Rights of Buyer or Seller:** A party defaulting under this Agreement shall be liable for the default. The non-defaulting party may pursue any lawful remedy against the defaulting party.
- b. **Rights of Broker:** In the event a party defaults under this Agreement, the defaulting party shall pay as liquidated damages to every broker involved in this transaction with whom the defaulting party does not have a brokerage engagement agreement an amount equal to the share of the commission the broker would have received had the transaction closed. For purposes of determining the amount of liquidated damages to be paid by the defaulting party, the written offer(s) of compensation to such broker and/or other written agreements establishing such broker's commission are incorporated herein by reference. The liquidated damages referenced above are a reasonable pre-estimate of the Broker(s) actual damages and are not a penalty. In the event a Broker referenced herein either has a brokerage engagement agreement or other written agreement for the payment of a real estate commission with a defaulting party, the Broker shall only have such remedies against the defaulting party as are provided for in such agreement.
- c. **Attorney's Fees:** In any litigation or arbitration arising out of this Agreement, including but not limited to breach of contract claims between Buyer and Seller and commission claims brought by a broker, the non-prevailing party shall be liable to the prevailing party for its reasonable attorney's fees and expenses.

3. **Risk of Damage to Property.** Seller warrants that at the time of closing the Property and all items remaining with the Property, if any, will be in substantially the same condition (including conditions disclosed in the Seller's Property Disclosure Statement) as on the Binding Agreement Date, except for changes made to the condition of Property pursuant to the written agreement of Buyer and Seller. Seller shall deliver Property clean and free of trash and debris at time of possession. Notwithstanding the above, if the Property is destroyed or substantially damaged prior to closing, Seller shall promptly give notice to Buyer of the same and provide Buyer with whatever information Seller has regarding the availability of insurance and the disposition of any insurance claim. Buyer or Seller may terminate this Agreement without penalty not later than fourteen (14) days from receipt of the above notice. If Buyer or Seller do not terminate this Agreement, Seller shall cause Property to be restored to substantially the same condition as on the Binding Agreement Date. The date of closing shall be extended until the earlier of one year from the original date of closing, or seven (7) days from the date that Property has been restored to substantially the same condition as on the Binding Agreement Date and a new certificate of occupancy (if required) is issued.

4. **Other Provisions.**

- a. **Entire Agreement, Modification and Assignment:** This Agreement constitutes the sole and entire agreement between all of the parties, supersedes all of their prior written and verbal agreements and shall be binding upon the parties and their successors, heirs and permitted assigns. No representation, promise or inducement not included in this Agreement shall be binding upon any party hereto. This Agreement may not be amended or waived except upon the written agreement of Buyer and Seller. This Agreement may not be assigned by Buyer except with the written approval of Seller which may be withheld for any reason or no reason. Any assignee shall fulfill all the terms and conditions of this Agreement.
- b. **Survival of Agreement:** The following shall survive the closing of this Agreement: (1) the obligation of a party to pay a real estate commission; (2) any warranty of title; (3) all representations of Seller regarding the Property; (4) the section on condemnation; and (5) any obligations which the parties herein agree shall survive the closing or may be performed or fulfilled after the closing.
- c. **Governing Law and Interpretation:** This Agreement may be signed in multiple counterparts each of which shall be deemed to be an original and shall be interpreted in accordance with the laws of Georgia. No provision herein, by virtue of the party who drafted it, shall be interpreted less favorably against one party than another. All references to time shall mean the time in Georgia. If any provision herein is to be unenforceable, it shall be severed from this Agreement while the remainder of the Agreement shall, to the fullest extent permitted by law, continue to have full force and effect as a binding contract.
- d. **Time of Essence:** Time is of the essence of this Agreement.
- e. **Terminology:** As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa; and (2) all pronouns shall mean and include the person, entity, firm, or corporation to which they relate. The letters "N.A." or "N/A", if used in this Agreement, shall mean "Not Applicable", except where the context would indicate otherwise.
- f. **Binding Agreement Date:** The Binding Agreement Date shall be the date when a party to this transaction who has accepted an offer or counteroffer to buy or sell real property delivers notice of that acceptance to the party who made the offer or counteroffer in accordance with the Notices section of the Agreement. Notice of the Binding Agreement Date may be delivered by either party (or the Broker working with or representing such party) to the other party. If notice of accurate Binding Agreement Date is delivered, the party receiving notice shall sign the same and immediately return it to the other party.
- g. **Duty to Cooperate:** All parties agree to do all things reasonably necessary to timely and in good faith fulfill the terms of this Agreement. Buyer and Seller shall execute and deliver such certifications, affidavits, and statements required by law or reasonably requested by the closing attorney, mortgage lender and/or the title insurance company to meet their respective requirements.
- h. **Electronic Signatures:** For all purposes herein, an electronic or facsimile signature shall be deemed the same as an original signature; provided, however, that all parties agree to promptly re-execute a conformed copy of this Agreement with original signatures if requested to do so by, the buyer's mortgage lender or the other party.
- i. **Extension of Deadlines:** No time deadline under this Agreement shall be extended by virtue of it falling on a Saturday, Sunday or federal holiday except for the date of closing.

- j. **GAR Forms:** The Georgia Association of REALTORS®, Inc. ("GAR") issues certain standard real estate forms. These GAR forms are frequently provided to the parties in real estate transactions. No party is required to use any GAR form. Since these forms are generic and written with the interests of multiple parties in mind, they may need to be modified to meet the specific needs of the parties using them. If any party has any questions about his or her rights and obligations under any GAR form he or she should consult an attorney. The parties hereto agree that the GAR forms may only be used in accordance with the licensing agreement of GAR. While GAR forms may be modified by the parties, no GAR form may be reproduced with sections removed, altered or modified unless the changes are visible on the form itself or in a stipulation, addendum, exhibit or amendment thereto.
- k. **No Authority to Bind:** No Broker or affiliated licensee of Broker, by virtue of this status, shall have any authority to bind any party hereto to any contract, provisions herein, amendments hereto, or termination hereof. However, if authorized in this Agreement, Broker shall have the right to accept notice on behalf of a party.
- l. **Condemnation:** Seller shall: (1) immediately notify Buyer if the Property becomes subject to a condemnation proceeding; and (2) provide Buyer with the details of the same. Upon receipt of such notice, Buyer shall have the right, but not the obligation for 7 days thereafter, to terminate this Agreement upon notice to Seller in which event Buyer shall be entitled to a refund of all earnest money and other monies paid by Buyer toward the Property without deduction or penalty. If Buyer does not terminate the Agreement within this time frame, Buyer agrees to accept the Property less any portion taken by the condemnation and if Buyer closes, Buyer shall be entitled to receive any condemnation award or negotiated payment for all or a portion of the Property transferred or conveyed in lieu of condemnation.
5. **Beware of Cyber Fraud.** Fake e-mails attempting to get you to wire money to criminal computer hackers are increasingly common in real estate transactions. Under this scam, computer hackers fraudulently assume the online identity of the actual mortgage lender, closing attorney and/or real estate broker with whom you are working in the real estate transaction. Posing as a legitimate company, they then direct you to wire money to them. In many cases, the fake e-mail is sent from what appears to be the authentic web page of the legitimate company responsible for sending the wiring instructions. You should use great caution in wiring funds based solely on wiring instructions sent to you by e-mail. Independently verifying the wiring instructions with someone from the company sending them is the best way to prevent fraud. In particular, you should treat as highly suspect any follow up e-mails you receive from a mortgage lender, closing attorney and/or real estate broker directing you to wire funds to a revised account number. Never verify wiring instructions by calling a telephone number provided along with a second set of wiring instructions since you may end up receiving a fake verification from the computer hackers trying to steal your money. Independently look up the telephone number of the company who is supposed to be sending you the wiring instructions to make sure you have the right one.
6. **Exhibits and Addenda.** All exhibits and/or addenda attached hereto, listed below, or referenced herein are made a part of this Agreement. If any such exhibit or addendum conflicts with any preceding paragraph (including any changes thereto made by the parties), said exhibit or addendum shall control:
- ☐ All Cash Sale Exhibit (F79) "_____"
 - ☐ Back-up Agreement Contingency Exhibit (F91) "_____"
 - ☐ Closing Attorney Acting as Holder of Earnest Money Exhibit (F84(A)) "_____"
 - ☐ Community Association Fees, Disclosures and Related Issues ("Disclosure") Exhibit (F55) "_____"
 - ☐ Condominium Resale Purchase and Sale Exhibit (F33) "_____"
 - ☐ Conventional Loan Contingency Exhibit (F64) "_____"
 - ☐ FHA Loan Contingency Exhibit (F63) "_____"
 - ☐ Lead-Based Paint Exhibit (F54) "_____"
 - ☐ Lease Purchase and Sale Exhibit (F29) (to be used with F30) "_____"
 - ☐ Lease for Lease/Purchase Agreement (F30) (to be used with F29) "_____"
 - ☐ Legal Description Exhibit (F147) "_____"
 - ☐ Loan Assumption Exhibit (F61) "_____"
 - ☐ Sale or Lease of Buyer's Property Contingency Exhibit (F90) "_____"
 - ☐ Seller's Property Disclosure Statement Exhibit (F50, F51, F52 or F53) "_____"
 - ☐ Survey of Property as Exhibit "_____"
 - ☐ Temporary Occupancy Agreement for Seller after Closing Exhibit (F140) "_____"
 - ☐ USDA-RD Loan Contingency Exhibit (F78) "_____"
 - ☐ VA Loan Contingency Exhibit (F65) "_____"
 - ☐ Other _____
 - ☐ Other _____
 - ☐ Other _____
 - ☐ Other _____

3rd Document

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1 Buyer's Signature

Colt Properties LLC By: Zach Fletcher 10/18/2018

Print or Type Name Date

737 Walnut St.

Buyer's Address for Receiving Notice

Macon, GA 31201

478-787-3841

Buyer's Phone Number: ☒ Cell ☐ Home ☐ Work

coltpropertiesllc@gmail.com

Buyer's E-mail Address

2 Buyer's Signature

Print or Type Name Date

Buyer's Address for Receiving Notice

Buyer's Phone Number: ☐ Cell ☐ Home ☐ Work

Buyer's E-mail Address

Additional Signature Page (F149) ☐ is ☐ is not attached.

Selling Broker/Affiliated Licensee Contact Information

Washburn & Associates

Selling Brokerage Firm

Roy Dale Washburn, Jr.
Broker/Affiliated Licensee Signature Date

Roy Dale Washburn, Jr. 10478

Print or Type Name GA Real Estate License #

478-320-5773 N/A
Licensee's Phone Number Fax Number

rdwashburn@gmail.com
Licensee's E-mail Address

Central Georgia Board of REALTORS
REALTOR® Membership

3040 Riverside Drive, Suite C-2, Macon, GA 31210
Broker's Address

478-477-2324 N/A
Broker's Phone Number Fax Number

DWA 01 H-47725
MLS Office Code Brokerage Firm License Number

1 Seller's Signature

Tommie J. Lingenfelter 10-18-18

Print or Type Name Date

Tommy J. LINGENFELTER

Seller's Address for Receiving Notice

100 Nottingham

Warner Robins, GA 31088

Seller's Phone Number: ☒ Cell ☐ Home ☐ Work

tlingenfelter55@gmail.com 478-396-4240

Seller's E-mail Address

2 Seller's Signature

Judith R. Lingenfelter 10-18-18

Print or Type Name Date

100 Nottingham

Seller's Address for Receiving Notice

Warner Robins, GA 31088

Seller's Phone Number: ☐ Cell ☐ Home ☐ Work

Seller's E-mail Address

Additional Signature Page (F149) ☐ is ☐ is not attached.

Listing Broker/Affiliated Licensee Contact Information

Washburn & Associates

Listing Brokerage Firm

Roy Dale Washburn, Jr.
Broker/Affiliated Licensee Signature Date

Roy Dale Washburn, Jr. 10478

Print or Type Name GA Real Estate License #

478-320-5773 N/A
Licensee's Phone Number Fax Number

rdwashburn@gmail.com
Licensee's E-mail Address

Central Georgia Board of REALTORS
REALTOR® Membership

3040 Riverside Drive, Suite C-2, Macon GA 31210
Broker's Address

478-477-2324 N/A
Broker's Phone Number Fax Number

DWA 01 H-47725
MLS Office Code Brokerage Firm License Number

Binding Agreement Date: The Binding Agreement Date in this transaction is the date of October 19, 2018
and has been filled in by Roy Dale Washburn, Jr.

Exhibit B

Listing Agreement

Exclusive Seller Listing Agreement

For and inconsideration of the mutual promises contained herein and other good and valuable consideration, Judith R. Lingenfelter and Tommie J. Lingenfelter(hereinafter referred to as SELLERS or CLIENTS) and WASHBURN & ASSOCIATES , (hereinafter referred to as BROKER) do hereby enter into this Agreement, on the date of January 17, 2018.

1. **Exclusive Listing Agreement.** Sellers hereby grants to Broker the exclusive right as agent of the Seller to show and offer for sale the property located at 2986 Avondale Mill Rd., Macon, Bibb County , Georgia , 31216, at a price of \$180,000. (One Hundred and Eighty Thousand Dollars). This is a house and a tract of land containing 4.14 acres identified in the records of the Bibb County Tax Assessors Office as Parcel Number O150-0034.

2. **Legal Description.** This property is the same property conveyed to the Sellers in Deed Book 1534, Page 36, Clerk's Office, Bibb Superior Court.

3. **Term.** The term of this agreement shall begin on the date of January 17, 2018 and end on June 30, 2018 (hereinafter referred to as "Listing Period".)

4. **Broker's Duties to Seller.** Broker's duties to Seller shall be to:

- A. make all disclosures as required by law;
- B. make an effort to procure a buyer ready, willing and able to purchase the property at a sales price acceptable to Seller;
- C. comply with all applicable laws in performing it's duties.
- D. assist the Sellers as needed through the closing of any transaction that occurs as a result of the efforts of The Broker.

5. **Seller's Duties.** Seller represents that Seller:

- A. presently has title to the property or has full authority to enter into this agreement;
- B. will cooperate with the Broker to sell the property and will refer all inquiries about the purchaser of the property to the Broker during the term of this Agreement
- C. will provide the Broker with accurate information about the property (including information concerning all adverse material facts pertaining to the physical condition of the property);
- D. will fully comply with all state and federal laws.

6. **Marketing.** Broker is authorized to advertise and market the property for sale in any media of the Broker's choosing, including on the Internet and in Multiple Listing Services and in cooperation with other real estate brokers and agents of other brokers.

7. **Commission.**

A. If, during the term of this Agreement, the Seller enters into a contract (including an Option Contract) for the sale or exchange of the Property or any portion thereof, with any buyer, Seller agrees to pay Broker at the closing of the transaction (regardless of whether the closing is during or after the term of this agreement), the following commission: Six per cent (6%) of any purchase price which the sellers accept.

B. Broker shall have the right to, but is not required to by this agreement, share this commission with another Broker

C. If Seller, during a Protected Period of 180 days from the expiration or cancellation of this agreement, sells or exchanges the property to any buyer who, made an offer on, received information on, inquired about, visited or otherwise learned about the property during the term of this agreement or any extension thereof, then Seller shall pay the commission described herein to the Broker at the closing of the transaction.

8. Limits on Brokers Authority and Responsibility. Seller acknowledges and agrees that Broker:

- A. may show other properties to prospective buyers who are interested in the property;
- B. shall not be responsible to advise Seller on any matter other than the acceptability of a price offered for the property and the terms of such an offer, the preference of one offer over another and matters regarding the closing of a transaction to sell the property;
- D. may disclose all information about the Property to others;
- E. shall have no authority to bind Seller to any contract or agreement.

9. Broker's Policy on Agency. The types of agency relationships offered by the Broker are: seller agency, buyer agency, designated agency, dual agency, landlord agency and tenant agency. The Broker does not offer sub-agency.

10. Dual Agency Disclosure. If Seller and a prospective buyer are both being represented by the Broker, Seller is aware that Broker is acting as a dual agent in this transaction and consents to the same. Seller has been advised that:

- A. In serving as a dual agent the Broker will be representing two clients whose interests are, or at times, could be different or even adverse.
- B. Seller does not have to consent to dual agency and the consent of the Seller to dual agency has been given voluntarily.

11. Independent Contractor Relationship. This Agreement shall create an independent contractor relationship between the Broker and Seller. Broker shall at no time be considered an employee of Seller.

12. Time of Essence. Time is of the essence of this agreement.

13. Special Stipulations: Roger Palmer of Cartersville, Georgia whose phone number is 706-570-8583, contacted the Sellers directly before this Exclusive Listing Agreement was signed. If Roger Palmer or any entity in which he is involved purchases this property, Washburn & Associates will provide typical real estate brokerage and consulting services relative to this transaction and will receive a commission equal to 3% of the purchase price, paid from the Sellers' funds, at the closing of the transaction.

Broker: WASHBURN & ASSOCIATES

Sellers:

By:

Roy Dale Washburn, Jr.

Judith Underwood Lingenfelter

Tommie J. Lingenfelter