

CLERK, U.S. DISTRICT COURT
By _____
Deputy

Plaintiff,

VS.

FUNDING RESOURCE GROUP, a/k/a FRG Trust, et al,

Defendants,

and

HOWE FINANCIAL TRUST, an Indiana corporation,
et al,

Defendants Solely for Purposes of Equitable

**RECEIVER'S UNOPPOSED MOTION TO SELL REAL PROPERTY AT PRIVATE
SALE FREE AND CLEAR OF ALL LIENS, CLAIMS AND
ENCUMBRANCES AND BRIEF IN SUPPORT
(POTTAWATOMIE PROPERTY)**

TO THE HONORABLE JEFF KAPLAN, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Michael J. Quilling ("Receiver"), and files his Unopposed Motion to Sell Real Property at Private Sale Free and Clear of all Liens, Claims and Encumbrances and Brief in Support (Pottawatomie Property) and in support of such would respectfully show unto the Court as follows:

Background Facts

1. On November 13, 1998, the United States Securities and Exchange Commission (“SEC”) initiated these proceedings and, in connection therewith, sought the appointment of a receiver. On November 13, 1998, the Court issued an Order appointing Michael J. Quilling Receiver as to the Defendants and the Equity Relief Defendants named in the Complaint at that time

("Receivership Order"). One of the entities to which the Receivership Order applies is Howe Financial Trust.

2. Subsequent to his appointment, the Receiver took control and possession of certain real property owned by Howe Financial Trust located in Elkhart County, Indiana, having a street address of 58100 Pottawatomie, Osceola, Indiana ("Property").

3. On April 11, 2001 the Receiver filed his Unopposed Motion to Sell Property at Private Sale and to Appoint Appraisers and Brief in Support. By Order dated April 12, 2001, the Court scheduled a hearing on the Motion on April 27, 2001. On April 27, 2001 the Court issued its Order which allowed the Receiver to hire appraisers and begin marketing efforts with respect to a private sale. Thereafter, the Receiver began efforts to market the Property for private sale including, but not limited to, engaging the services of a realtor (Prudential One Realty) and executing a listing agreement with respect to the Property pursuant to which the Property has been offered for private sale at \$425,000.00. As the result of the lack of interested buyers, the listing price has been reduced to \$399,000.00.

4. Since the time the Receiver engaged the services of Prudential One and offered the Property for sale, he has received an offer to purchase for \$300,000.00, which offer the Receiver has accepted subject to court approval. A copy of the Proposed Contract for Sale is attached hereto as Exhibit "1". The written contract for sale is the result of substantial arms-length negotiation between the Receiver and the proposed buyer. Pursuant to the Contract for Sale, real estate commissions and normal closing costs are to be deducted from the gross sale proceeds at closing. Pursuant to the Contract for Sale, the Receiver has been paid a \$5,000.00 earnest money deposit and will receive a \$50,000.00 non-refundable deposit upon Court approval of the Contract. The balance of the purchase price (\$245,000.00) is to be paid by August 15, 2002 with a 45 day grace period.

5. The Property is comprised of 17 acres and a 6000 square foot house with indoor pool and related structures. It is a very unique property in the community in which it is situated. The pool of prospective buyers is extremely limited. When Howe Financial Trust bought the property, the property had been for sale for over two years. Accordingly, the Receiver believes that legitimate offers to purchase will be few and far between. In this instance, the proposed buyer is an entity related to a ministry which owns adjoining property and wants to use the property for a youth center/camp and meeting facilities. The entity, Pleasant Ridge Development, will fund the non-refundable deposit (\$50,000.00) with the intention that the ministry will raise the balance of the purchase funds through private sources. Title will then be conveyed to the ministry. The balance of the purchase price is to be paid by August 15, 2002 with a 45 day grace period.

6. The facts and circumstances of how Howe Financial Trust acquired its interest and title to the Property is well-documented and was the subject of the Receiver's Motion to Compel Conveyance of Receivership Property filed with the Court on February 9, 2001. As a result of the filing of the motion, an agreement was eventually reached whereby a Warranty Deed was given to the Receiver. In short, \$320,000.00 of investor funds are traceable to the purchase of the Property. Thus, the proposed purchase price (\$300,000.00) will allow recovery of most of the funds.

Argument and Authorities

7. 28 U.S.C. § 2001 provides that a Receiver may sell property at private sale if certain conditions are satisfied. First, a sale must be for at least two-thirds of the appraised value as established by three disinterested persons appointed by the Court to appraise the Property. Pursuant to the Court's Order of April 27, 2001 the Receiver engaged the services of three appraisers and each of them have provided written appraisals to the Receiver. The average amount of the three

appraisals is \$365,000.00. Accordingly, the proposed sale price (\$300,000.00) is within the allowable two-thirds range.

8. The Court must also find that the proposed sale is such that the best interests of estate will be conserved thereby. This condition is easily satisfied because of the proposed sale. First, the sale price will allow a recovery of most of the investor funds diverted into acquisition of the Property. Second, a sale now will allow the receivership estate to avoid ongoing maintenance costs (the proposed purchaser, in exchange for immediate possession, agrees to assume the costs during the approval process and until final funding). During the time the Receiver has held the Property, those costs have averaged about \$775.00 per month. Third, allowing the sale to close as contemplated and allowing the Receiver to deposit those funds in his receivership account will allow interest to accrue on those funds to the benefit of the receivership estate. Finally, allowing the sale to close will allow the Receiver to close the receivership estate and make a final distribution to investors.

9. The Court cannot confirm the private sale until the terms of the sale are published in a newspaper of general circulation. The Receiver is advised that the newspaper of general circulation in the area is the *Elkhart Truth*. The Receiver requests that the Court direct and order that the terms of the proposed private sale of the Property be published in the *Elkhart Truth* for 10 days. In that regard, the Receiver proposes to use the language in the form set forth in Exhibit 2 attached hereto. The Receiver is advised that the approximate cost of such an ad for 10 days is \$54.00.

10. 28 U.S.C. § 2001 also provides that the sale cannot be approved if a bona fide offer is received which is at least 10% more than the proposed published sale price. The Receiver requests that if no such increased offer is received after publication of the proposed sale that he be allowed to close the proposed sale.

11. The district court has wide discretion in judging whether a receiver's sale is fair in terms and result and serves the best interests of the estate. *Fleet National Bank v. H&D Entertainment, Inc.*, 96 F.3d 532 (1st Cir. 1996), citing *United States v. Peter*, 777 F.2d 1294, 1298 n.6 (7th Cir. 1985) and *United States v. Branch Coal*, 390 F.2d 7, 10 (3rd Cir.), cert. Denied, 391 U.S. 966, 88 S.Ct. 2034 (1968). The court has broad discretion in setting the terms of conditions of a sale under 28 USC §2001. *United States v. Hundwardsen*, 39 F.Supp.2d 1157 (N.D. Iowa 1999), citing *United States v. Branch Coal Corp.*, 390 F.2d 7, 10 (3rd Cir.), cert. Denied, 391 U.S. 966, 88 S.Ct. 2034 (1968); see *United States v. Garcia*, 474 F.2d 1202, 1206 (5th Cir. 1973). The court must decide whether, based on the record made by the parties, the best interest of the estate will be served by a public or a private sale. *Id.* However, section 2001(b) "limits the receiver's ability to sell foreclosed property at a private sale for an unfair price" by setting in place appraisal procedures and acceptable price limits. *United States v. Stonehill*, 83 F.3d 1156 (9th Cir. 1996). Section 2001 "contemplates compliance with certain procedures designed to protect the best interest of the estate" *Tanzier v. Huffines*, 412 F.2d 221 (3rd Cir. 1969).

12. In general, the court has broad discretion to set the terms of a public sale; whereas it must generally follow the procedures in place for a private sale. See *Tanzier v. Huffines*, 412 F.2d 221 (3rd Cir. 1969)(federal statute expresses preferential course to be followed in connection with a court authorized sale of *personal property* and district court should not order otherwise except *under extraordinary circumstances*). In cases involving the private sale of realty, the courts have consistently adhered to the procedures outlined in section 2001(b). See *United States v. Garcia*, 474 f.2d 1202 (5th Cir. 1973)(court scrupulously adhered to statutory requirements of section 2001 for judicial sale of realty); *U.S. v. "A" Manufacturing Company*, 541 F.2d 504 (5th Cir. 1976)(affirming court confirmation of realty sale for greater price than highest appraisal value). Consequently, broad

discretion of the court does not include bypassing the specific procedures set out in section 2001(b). To bypass the stringent requirements of 2001(b), the court can order a public sale under 2001(a) and set the terms and conditions as it so desires.

WHEREFORE, PREMISES CONSIDERED, the Receiver respectfully prays that upon final hearing and consideration of this matter that the Court approve a private sale of the real Property located at 58100 Pottawatomie, Osceola, Indiana, free and clear of all liens, claims and encumbrances, and that the Receiver be authorized to publish the proposed sale in the *Elkhart Truth*, and for such other and further relief, general or special, at law or in equity, to which the Receiver may show himself to be justly entitled.

Respectfully submitted,

QUILLING, SELANDER, CUMMISKEY
& LOWNDS, P.C.
2001 Bryan Street
Suite 1800
Dallas, Texas 75201-4240
(214) 871-2100 (Telephone)
(214) 871-2111 (Telecopier)

By: 

Michael J. Quilling, SBN 16432300
D. Dee Raibourn, III, SBN 24009495

ATTORNEYS FOR RECEIVER

CERTIFICATE OF CONFERENCE

I have conferred with Robert Brunig of the SEC regarding the relief requested in this motion and he does not oppose the relief requested.



Michael J. Quilling

CERTIFICATE OF SERVICE

I certify that on the 24th day of February, 2002, a true and correct copy of the foregoing was served via United States mail, first-class, postage pre-paid, on:

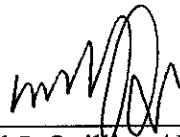
Robert B. Brunig
Securities & Exchange Commission
801 Cherry Street, 19th Floor
Fort Worth, Texas 76102

Deborah Goodall
Goodall & Sooter
12830 Hillcrest Rd., Suite 111
Dallas, Texas 75230

Wendell A. Odom, Jr.
440 Louisiana, Suite 880
Houston, Texas 77002

Dan. R. Waller
Secore & Waller, LLC
13355 Noel Road, Suite 2290
Dallas, Texas 75240

Raymond Parr
15455 Point NW Blvd., Apt. #507
Houston, Texas 77095



Michael J. Quilling / D. Dee Raibourn, III

Approved by and restricted to use by members of the
MLS of South Bend-Mishawaka & Elkhart County (11-49)

This is a legally binding contract, if
not understood, seek legal advice.

CONTRACT TO PURCHASE

Date: Feb. 7, 2002

- 1.
2. LISTING BROKER (Co.) Prudential One Realty (# 7) By: Sally Hernandez (# 320)
3. SELLING BROKER (Co.) Prudential One Realty (# 7) By: Sally Hernandez (# 320)
4. as ☐ Buyer's Agent ☐ Limited Agent Selling Broker compensated by ☐ Seller ☐ Buyer
5. The undersigned, hereinafter called "Purchaser", hereby agrees to purchase from the owner, hereinafter called "Seller", the real estate
6. known as: Address: 58100 Pottawatomie
7. City: Osceola Indiana Zip: 46561 The abbreviated legal description is long legal
8. In listing office- to include 17.2 acres parcel# 10-05-22-127-004
9. Parcel(s): # 01-05-22-105-007
10. 1. Purchase Price: Three Hundred Thousand and no/100 Dollars (\$ 300,000)
11. Earnest Money Deposit: Five Thousand and no/100 Dollars (\$ 5,000)
12. Additional Earnest Money Deposit: _____ Dollars (\$ _____)
13. to be paid on or before _____ The earnest money deposit to be held by the Listing Broker and applied to
14. the purchase price at the closing of this transaction.
15. 2. Earnest Money. The Listing Broker shall deposit the earnest money into its escrow account within two (2) banking days of acceptance
16. of this Contract and hold it until time of closing the transaction or termination of this Contract. If Purchaser fails for any reason to submit
17. earnest money per the Contract, Seller may terminate this Contract. Earnest money shall be returned promptly in the event this offer is not
18. accepted. If this Contract is accepted and the transaction does not close because a contingency to closing is not satisfied, Purchaser shall
19. receive the earnest money less any expenses incurred on behalf of Purchaser. If this offer is accepted and Purchaser fails or refuses to
20. close the transaction without legal cause, the earnest money shall be forfeited by Purchaser to Seller, and Seller may pursue any other
21. legal and equitable remedies including specific performance. The Broker shall not be required to distribute the earnest money to the Seller
22. or Purchaser unless the parties provide the Broker with mutual release or a Court issues a final, unappealed order for payment. If the
23. parties do not mutually consent to the release of the earnest money, then they agree that the Broker holding the earnest money may file
24. legal action or an interpleader action with a Court regarding disposition of the earnest money and that the Broker's resulting cost (including
25. attorney's fee) incurred in connection with legal action or interpleader shall be paid out of the earnest money deposit before it is paid into
26. court.
27. 3. Method Of Payment (Circle letter of appropriate paragraph)
28. A. Cash. The purchase price shall be paid in cash at the time of closing the transaction with no financing required.
29. B. New Mortgage. Completion of this transaction shall be subject to Purchaser's ability to obtain a ☐ conventional
30. ☐ insured conventional ☐ FHA ☐ VA first mortgage upon the real estate in the amount of _____ % of purchase price or \$ _____
31. dollars payable in not less than _____ years. Purchaser shall pay all costs of obtaining financing unless otherwise specified in this Contract.
32. C. Assumption/Land Contract/Owner Financing/Other. (See Addendum)
33. 4. Time Allowed for Financing. Purchaser agrees to make application or applications for any financing necessary to complete this
34. transaction within n/a calendar days after the acceptance of this Contract to Purchase, and to make a diligent effort in good faith to
35. obtain financing. No more than n/a calendar days after the acceptance of the Contract to Purchase shall be allowed for obtaining an
36. appraisal and a written mortgage commitment. If written mortgage commitment is not obtained within the time specified above, this
37. Contract shall then terminate at the written request of either party and the earnest money deposit shall be refunded to Purchaser without
38. delay, less any expenses incurred on behalf of Purchaser.
39. 5. Property Included In Sale. The above purchase price includes all improvements permanently installed and affixed, and all related
40. equipment, including, but not limited to, lighting fixtures, window shades, blinds, storm windows, screens, awnings, fences, clothes poles,
41. laundry tubs, landscaping, shrubbery, storm doors, traverse rods, drapery poles and fixtures, electrical and/or gas fixtures, water heater,
42. central air conditioner, disposal, gas burner, oil burner, heat regulator, humidifier, water pump, sump pump, towel racks and bars, door bells
43. or chimes, all built-in appliances, attached mirrors, TV antenna (except satellite dish), outside gas grills, carpeting, mailbox, outside lights,
44. garage door opener with controls, water softener ☐ is ☐ is not included, and the following: Everything currently on
45. the premises at the time of this contract is to remain. All appliances
46. window coverings, and pool equipment.
47. _____
48. _____
49. which belong to the above property and are now on the premises or elsewhere. All said items will have been fully paid for by the Seller at
50. or before closing the transaction.
51. 6. Closing. The closing of the sale (the "Closing Date") shall be on or before Aug. 15, 2002, or within 45 calendar days
52. after Aug. 15, 2002 whichever is later, or this Contract shall terminate unless an extension of time is mutually agreed to in writing.
53. 7. Ownership And Possession. Ownership shall begin at the date and time of closing. The possession of the Property shall be delivered
54. to Purchaser ☐ at closing or ☐ _____ calendar days after day of closing at the rate of \$ _____ per each calendar day of
55. possession; after which Seller agrees to pay as liquidated damages \$ _____ for each calendar day Purchaser shall not have been
56. tendered complete possession. Purchaser reserves the right to a Walk through prior to closing. See addendum for possession
57. 8. Water Test And Certification. Purchaser ☐ shall ☒ shall not obtain a written inspection report at Purchaser's expense with the
58. following items to be tested: ☐ Bacterial ☐ Lead
59. ☐ Copper ☐ Nitrate ☐ Other: _____
60. Certification, for St. Joseph County properties, shall be at expense of ☐ Seller ☐ Purchaser. Any necessary remedy required as a result of
61. these reports may be done at Seller's expense. If the Seller is unwilling or unable to remedy the problem, then this Contract may be
62. terminated by written notice.
63. 9. Wood Destroying Insects. Purchaser ☒ shall ☐ shall not, unless required by lender, obtain a written inspection report from a licensed
64. pest control inspector showing house and garage to be free from wood destroying insects within 15 calendar days of acceptance of this
65. Contract. Any necessary wood infestation treatment or repair required as a result of this report may be done at Seller's expense, or at
66. Purchaser's option, this Contract may be terminated by written notice.
67. 10. Survey. Purchaser shall, at Purchaser's expense, receive a ☐ SURVEYOR LOCATION REPORT, which is a report where corner
68. markers are not set; ☐ BOUNDARY SURVEY, which is a survey where corner markers of the Property are set prior to closing;
69. ☒ WAIVED, unless required by lender. The survey shall (1) be received prior to closing and certified as of a current date and (2) be
70. reasonably satisfactory to Purchaser.
71. 11. Flood Area. Buyer ☐ may ☒ may not terminate this Contract if the Property requires flood insurance or is subject to building or use
72. limitations by reason of the location in a flood area.

[Signature]
BUYER'S INITIALS

[Signature]
SELLER'S INITIALS

Address: 58100 Pottawatomie, Osceola, INDate: Feb. 7 2002

3. **12. Association, Restrictions, Covenants, And Fees/Dues:** Purchaser acknowledges that property may be subject to Association, restrictions, covenants, fees and dues.

5. **13. Condition Of Property.** Purchaser acknowledges that they have been advised that the Broker(s) or Sales Associate(s) is not a professional building inspector and that the Broker(s) or Sales Associate(s) has not made any warranties or guarantees (implied or otherwise) and accepts no liability for the condition or functioning of the real estate or its improvements. Purchaser further acknowledges that they have been advised by the Broker(s) or Sales Associate(s) that they may seek professional, independent inspection(s) of the condition of the real estate and its improvements and that the findings of such inspections are not warranted or guaranteed by the Broker(s) and Sales Associate(s). Inspections required by FHA, VA, or lender do not necessarily eliminate the need for other inspections and may be required in addition to those inspections listed below. Purchaser elects paragraph A below:

12. **A.** Purchaser reserves the right to have the Property inspected by qualified inspectors or contractors of Purchaser's choice and at Purchaser's expense. Purchaser shall provide Buyer's Agent, in writing, a list of said inspectors or contractors. The Purchaser shall have ~~30~~ ¹⁴ calendar days after acceptance of the Contract To Purchase to have the following inspections made and to make a written response to inspection report(s) or the property shall be deemed acceptable. Seller's failure to respond in writing within 5 calendar days, or a mutually agreed upon extension, shall constitute an acceptance of Purchaser's request. Notwithstanding terms or dates to the contrary, when the Purchaser or Seller are unable to respond in writing to the inspection reports or responses thereto as a consequence of a circumstance outside of their control, they shall have a reasonable extension of time to do so; provided, prior to the date response(s) is due, they notify the other party in writing of the cause of the delay in response and the date such response shall be made.

10. ☐ Home Inspection Report ☐ Fireplace ☐ Sprinkler System ☐ Septic Walkover
11. ☐ Plumbing System ☒ Central Heating System ☐ Water Softener ☐ Chimney
12. ☐ Well System ☒ Central Cooling System ☐ Electrical System
13. ☐ Radon ☐ Roof ☒ Full Septic

34. Other items for inspection: Sale subject to satisfactory soil testing surrounding the
35. underground storage fuel tanks. Purchaser to have the right to remove
36. said tanks at his expense in order to complete the test.

37. Purchaser agrees that the total cost of repairing defects per the inspection reports above which do not exceed 1 % of purchase price or ☐ \$_____ shall not be basis for cancellation of this Contract and shall be corrected at Purchaser's discretion and expense. The previously disclosed defects per Seller's Residential Disclosure form are not to be included in total repair cost. Once required repairs exceed the amount agreed to above, any work necessary on components listed above or any repair required as a result of any inspection report may be done at Seller's expense, or in lieu thereof, at Seller's option, this Contract To Purchase may be terminated by written notice. If Seller elects to terminate, Purchaser must either elect in writing to proceed with the closing of the transaction without regard to and waiving the results of the inspection reports or must elect to terminate this Contract by written notice. If the sale contemplated hereunder is not closed, Listing Broker may use so much of the earnest money as is necessary to pay for all inspections which have been completed.

(Purchaser's Initials)

(Purchaser's Initials)

38. **B.** Purchaser hereby waives inspections and relies upon their own examination of the condition of the property and releases the Seller, Broker, and Salesperson(s) from any and all liability relating to any defect or deficiency affecting the property, which waiver shall survive the closing. Purchaser accepts property in its "as is" condition with all faults. Purchaser has been made aware that they should request independent inspections disclosing the condition of the property and has been afforded the opportunity to require, as a condition of the Contract, the above mentioned inspections. Required FHA/VA or lender inspections are not included in this waiver.

(Purchaser's Initials)

(Purchaser's Initials)

16. **14. Deed And Evidence Of Title.** At time of closing, the Seller agrees to execute and deliver to Purchaser the appropriate deed conveying merchantable title, or land contract if so specified, conveying the real estate, or in the case of a land contract, agreeing to convey the real estate, free and clear of all liens and encumbrances, except as stated in this Contract, and subject to all covenants, restrictions, easements, and ordinances of record assumed by the Purchaser herein. Within a reasonable time prior to closing, Seller is to furnish owner's title insurance commitment equal to the purchase price insuring merchantable title. Should additional time be required for correcting defects of title, a reasonable time shall be given. The total cost of owner's policy to be paid by the Seller. Mortgage policy, if required, to be paid by the Purchasers.

23. **15. Risk Of Loss.** At the time of closing, Seller agrees that the real estate and the improvements thereon shall be in the same condition as they are now, ordinary wear and tear excepted. Any damage caused by the Seller to the real estate and/or its improvements, prior to delivery of possession to Purchaser shall be the sole responsibility of the Seller. The risk of loss or damage to the real estate and improvements until delivery of the deed or Land Contract, is assumed by the Seller. If all or a substantial portion of said property is so destroyed or damaged prior to the closing, this Contract may be rescinded at the election of the Purchaser and this Contract shall then be null and void. In such an event any earnest money deposited, less expenses, shall be returned promptly to the Purchaser. Current hazard insurance to be canceled at date of closing.

30. **16. Taxes, Assessments And Improvements.** The real property taxes for the current year, payable the next year, shall be prorated based upon the applicable assessments, credits and tax rates available on the day of closing. The Seller is to be charged all other real estate taxes which are now a lien against the real estate. **WARNING: The succeeding year tax bill for estates, recently constructed homes or following reassessment periods may greatly exceed the last tax bill available to the agent.** The Purchaser shall be responsible for all taxes regardless of credits authorized following the closing. Seller shall be charged at closing for all assessments or charges upon or applying to the said real estate for public or municipal improvements or service which on the date of closing are constructed or installed on or about the real estate or are serving the real estate.

37. **17. Rents, Dues And Deposits.** Rents and Dues, if any, shall be prorated as of the date of closing. All leases, security and/or damage deposits, if any, shall be transferred at the closing. Seller to provide any required occupancy permits.

39. **18. Costs.** Purchaser and Seller authorize the ordering of all documents necessary for the closing of this transaction and accept respective responsibilities for the payment of all charges incurred. Any costs for or on behalf of Purchaser or Seller shall be paid by the Purchaser or Seller, respectively, at closing or upon termination of this Contract. The processing fee charged by Title Company to be paid by Seller and the closing fee charged by Title Company to be paid by Purchaser, unless otherwise agreed in writing. VA cost shall be charged to and paid for in accordance with existing VA regulations and requirements.

44. Brokers may refer Purchaser or Seller to professionals, service providers or product vendors, including lenders, loan brokers, title companies, contractors and home warranty companies. Brokers do not guarantee the performance of any service provider. Purchaser and Seller are free to select providers other than those referred or recommended to them by Broker.

BUYER INITIALS

SELLER INITIALS

Address: 58100 Pottawatomie, Osceola, IN

Date: Feb. 7, 2002

17. **19. Rights Of Seller And Purchaser.** Purchaser and Seller understand that they may consult an attorney for any legal advice desired concerning this transaction. Nothing in this Contract shall prevent either Purchaser or Seller from enforcing the specific performance or any other remedies available at law to include but not limited to attorney fees, provided they are otherwise entitled to such relief. If either Seller or Purchaser commences a law suit with regard to the Contract, the prevailing party shall be entitled to recover all reasonable expenses incurred including reasonable attorney fees.
18. **20. Realtor/Broker/MLS.** The description and representations concerning the real estate and improvements thereon set out in the publications and materials of the Multiple Listing Service of the Greater South Bend-Mishawaka Association of REALTORS®, Inc. and Elkhart County Board of REALTORS®, Inc. are for the sole purpose of providing general guidance to REALTORS®/Brokers and their agents, and are not represented to be accurate. Therefore the Seller and Purchaser represent that they have not relied on any of the said publications or materials and are contracting based solely on their personal inspection of the real estate and improvements herein described.
19. The square footage stated in the Multiple Listing Service Data has been obtained from the assessors office or from other sources deemed reliable but may not be the exact square footage. Purchaser and Seller acknowledge that square footage is not the only basis to determine value.
20. The price and terms of financing on a closed sale shall be disseminated to members of the Greater South Bend-Mishawaka Association of REALTORS®, Inc. and/or Elkhart County Board of REALTORS®, Inc. to other Brokers upon request, governmental agencies appropriately inquiring, and shall be published in the Multiple Listing Services.
21. **21. Further Conditions.** Purchaser to deposit an additional, non-refundable \$50,000 (fifty-thousand dollars) upon court approval of this sale. (approximately 60 days after acceptance) This deposit shall be dispersed to the seller rather than held by the broker.
22. See addendum concerning possession.
23. **22. Lead-Based Paint Certification And Acknowledgment.** If the real estate was constructed prior to January 1, 1978, this Contract To Purchase shall not be legally binding unless and until Purchaser and Seller have filled out and executed a Lead-Based Paint Certification And Acknowledgment form which shall then be considered as a part of this Contract To Purchase.
24. Purchaser ☐ has ☐ has not received and executed the Lead-Based Paint Disclosure form. N/A
25. **23. Seller's Residential Real Estate Sales Disclosure: (check one)**
26. ☒ Purchaser acknowledges receipt and execution of a Seller's Residential Real Estate Sales Disclosure form.
27. ☐ Purchaser has not received an executed Seller's Residential Real Estate Sales Disclosure form.
28. **24. Expiration Of Offer.** Unless accepted by Seller and delivered to Buyer's Agent by _____ (A.M.) (P.M.) (Noon) (Midnight), the _____ day of _____, this Contract To Purchase shall be null and void and all parties shall be relieved and released of any and all liability or obligations.
29. **25. Receipt of Earnest Money.** The Selling Broker hereby acknowledges receipt of the earnest money deposit in the amount of \$ 5,000
30. ☐ cash ☒ check by _____ (agent) for Selling Broker.
31. **26. Complete Contract.** It is expressly agreed that all terms, and conditions of the Contract to Purchase are included herein, and no verbal agreements of any kind shall be binding upon the parties, and this Contract shall be binding upon the parties hereto, their heirs, personal representatives, successors and assigns. The parties verify that they have read, fully understand, and approve this Contract to Purchase and acknowledge receipt of a signed copy. The parties deem faxed and/or photocopied documents are binding and enforceable.
32. **OFFER BY PURCHASER** ☐ PLUS ADDENDUM(S)
33. Signature Jeffrey A. Chapp Signature _____
34. Printed Jeffrey A. Chapp, President Printed _____
35. Address Phoenix Ridge Development Co. Inc. Phone _____
36. PO Box 535 BRISTOL, IN 46507
37. **ACCEPTANCE BY SELLER;** ☒ As Submitted By Purchaser ☐ As Submitted By Purchaser Subject To Attached Counter Offer
38. As Seller of the real estate described hereinabove, I/We accept the foregoing Contract to Purchase this _____ day of _____ at _____ (A.M.) (P.M.) (Noon) (Midnight) and do hereby agree to sell and convey the above described real estate in accordance with the terms and conditions specified herein.
39. Seller represents and warrants that he is not a "foreign person" (individual or entity) and therefore is not subject to the Foreign Investment Real Property Tax Act. The parties acknowledge that they have not relied on any statement of the real estate Agent or Broker which are not expressed in this Contract.
40. Seller acknowledges receipt of a signed copy of this Contract.
41. Signature Michael J. Quilling Signature _____
42. Printed MICHAEL J. QUILLING RECIPIENT Printed _____
43. Address 2001 BRYAN ST. 1800 DALLAS Phone _____
44. ☐ **REJECTED**
45. Seller Signature _____ Seller Signature _____ Date _____ Time _____

ADDENDUM TO CONTRACT

**58100 Pottawatomie
Osceola, IN**

The Purchaser may have possession immediately upon acceptance. Purchaser agrees to assume, upon acceptance, all utilities, maintenance, and all insurance on the property.

No rent will be charged for the possession and the purchaser may make alterations to the property but no major structural alterations until all inspections have been accepted, court approval has taken place and the \$50,000 deposit has been made.

Purchaser understands that this contract is subject to court approval and that any monies spent on the property by the purchaser will not be refunded should court approval not be given.

Jeffery C. Bess 2-8-02
Purchaser date
Theodore Bess, D.D. Co Inc
Sally Hernandez 2-8-02
Agent date

x _____
Seller date

Agent date

Legal Notice

Notice of Private Sale

Notice is given pursuant to 28 U.S.C. §2001 in the case styled, *Securities and Exchange Commission, Plaintiff, vs. Funding Resource Group, et al.* Civil Action No. 3:98-CV-2689-M, in the Northern District of Texas, Dallas Division, that the Receiver for Howe Financial Trust obtained court approval on _____, 2002, to sell the following real property at private sale:

A part of the Northwest Quarter of Section 22, Township 37 North, Range 4 East, Baugo Township, Elkhart County, Indiana described as follows:

Commencing at a monument at the Southwest corner of the Northwest Quarter of said Section 22; thence North 00 degrees 25 minutes 37 seconds East along the West line of the Northwest Quarter of said Section 22 (being also the center line of Ash Road), 1,320.89 feet to a spike set on this survey at the intersection of the West line of the Northwest Quarter of said Section 22 with the South line of the Northwest Quarter of the Northwest Quarter of said Section 22, said intersection being midway between the monuments at the Southwest and Northwest corners of the Northwest Quarter of said Section 22; thence South 89 degrees 06 minutes 02 seconds East along the South line of the Northwest Quarter of the Northwest Quarter of said Section 22, 630.00 feet to an iron pin set on this survey said iron pin being at the Point of Beginning of this description; thence North 00 degrees 25 minutes 37 seconds East, 420.00 feet to an iron pin set on this survey; thence North 89 degrees 59 minutes 56 seconds West, 400.00 feet to an iron pin set on this survey; thence East along the East line of Creekwood Estates Third Section as recorded August 7, 1978 in Plat Book 14, page 1 in the Office of the Recorder of Elkhart County, Indiana the following two courses; North 00 degrees 25 minutes 37 seconds East, 145.32 feet; North 01 degrees 14 minutes 25 seconds East, 100.02 feet; thence along the Southerly line of Creekwood Estates First Section as recorded March 4, 1966 in Plat Book 9, page 61 in the Office of the Recorder of Elkhart County, Indiana the following five courses; North 26 degrees 15 minutes 04 seconds East, 153.38 feet; South 89 degrees 14 minutes 56 seconds East, 140.59 feet; South 66 degrees 18 minutes 22 seconds East, 204.56 feet; North 02 degrees 52 minutes 30 seconds West, 84.00 feet; North 79 degrees 45 minutes 04 seconds East, 193.00 feet; thence South 10 degrees 14 minutes 56 seconds East, 148.37 feet to an iron pin found on this survey; thence North 55 degrees 24 minutes 58 seconds East, 160.64 feet to an iron pin found on this survey, said pin being at the Southwest corner of Lot 14 of Creekwood Estates First Section as recorded; thence South 18 degrees 46 minutes 57 seconds East, 23.91 feet; thence Southerly and Easterly along the boundary of a survey done on June 3, 1975 by Homer W. Fisher as Job Number 54-1975 the following eight courses; South 14 degrees 48 minutes 08 seconds East, 68.87 feet; South 00 degrees 01 minutes 26 seconds East, 84.18 feet; South 09 degrees 42 minutes 20 seconds East, 56.77 feet; North 79 degrees 56 minutes 43 seconds East,

98.23 feet; North 51 degrees 38 minutes 55 seconds East, 94.11 feet; North 36 degrees 57 minutes 28 seconds East, 55.19 feet; North 78 degrees 16 minutes 43 seconds East, 121.12 feet to a point on the East line of the Northwest Quarter of the Northwest Quarter of said Section 22; thence South 72 degrees 28 minutes 28 seconds East, 174.20 feet; thence South 00 degrees 07 minutes 19 seconds East, 658.35 feet to a point on the South line of the Northeast Quarter of the Northwest Quarter of said Section 22; thence North 89 degrees 06 minutes 02 seconds West along said South line, 166.03 feet to an iron pin set on this survey at the Southwest corner of the Northeast Quarter of the Northwest Quarter of said Section 22, said Southwest corner being midway between the stone at the Northeast corner of the Northwest Quarter of the Northwest Quarter of said Section 22 and the Southeast corner of the Southwest Quarter of the Northwest Quarter of said Section 22 as depicted on a survey by Frank B. Rupe, Jr. dated September 13, 1952; thence continuing North 89 degrees 06 minutes 02 seconds West, along the South line of the Northwest Quarter of the Northwest Quarter of said Section 22, 705.26 feet to the Point of Beginning (58100 Pottawatomie, Osceola, Indiana)

The sale shall be "as is" and "where is."

Bona Fide offers in accordance with 28 U.S.C. §2001 must be received in writing on or before 5:00 p.m. on _____, 2002. All persons having claims against the property are required to present them within the time and in the manner prescribed by law and advise the Receiver of same in writing on or before 5:00 p.m. on _____, 2002.

Dated the ____ day of _____, 2002.

Direct correspondence to:
Howe Financial Trust
c/o Michael J. Quilling, Receiver
Quilling, Selander, Cummiskey, & Lownds, P.C.
2001 Bryan Street
Suite 1800
Dallas, Texas 75201
(214) 871-2100