

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

In re:

Morris Brown College,  
  
Debtor.

CHAPTER 11

CASE NO. 12-71188-BEM

**CLARK ATLANTA UNIVERSITY'S (I) OBJECTION TO THE DEBTOR'S  
MOTION TO SELL, (II) MOTION TO STAY THE SALE PROCESS, AND (III)  
MOTION FOR RELIEF FROM STAY**

COMES now Clark Atlanta University (including its predecessors-in-interest, "CAU") and submits this objection (the "**Objection**") to the *Motion Of Debtor Morris Brown College For Order (I) Authorizing And Approving Procedures For The Sale Of The Debtor's Assets; (II) Scheduling A Sale; (III) Approving Procedures For Assumption And Assignment Of Executory Contracts And Unexpired Leases In Connection With The Sale; And (IV) Approving Form Of Notice Of Sale* (Docket No. 330) (the "**Motion to Sell**"). Through this Objection CAU requests that the Court (i) deny the Motion to Sell (ii) stay the Debtor's sale process and (iii) grant CAU relief from the automatic stay so that CAU may enforce the CAU Reversionary Interests (defined below). In support of the Objection CAU avers as follows.

**I. BACKGROUND AND SUMMARY OF RELIEF REQUESTED**

1. Between 1940 and 1991, in various deeds (the "**Deeds**"),<sup>1</sup> CAU granted the Debtor certain rights in parcels of real property that belonged to CAU (the "**Reversionary Property**"). Importantly, CAU did not convey absolute or unconditional ownership of the Reversionary Property to the Debtor. Instead, as set forth in the Deeds, CAU's conveyance was

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<sup>1</sup> Copies of the Deeds are attached as Exhibit A.

conditioned on the Debtor using the Reversionary Property for specified educational purposes<sup>2</sup> (the “**CAU Reversionary Interests**”). Accordingly, if the Debtor were to cease using the Reversionary Property for educational purposes, title would revert back to CAU. The Reversionary Property comprises part but not all of the Debtor’s campus. See Exhibit B.

2. From the inception of the Debtor’s bankruptcy case until present, the Debtor has acknowledged the CAU Reversionary Interests. See, e.g., Docket No. 13 at 6, ¶¶ 20–21; Docket No. 259 at 24 of 58, § IV. G.

3. Initially, because the Debtor had sought to reorganize and continue pursuing its educational purposes, CAU took little action in the Debtor’s bankruptcy case other than to ensure that all parties were aware of the CAU Reversionary Interests.

4. However, once the Debtor announced its desire to pursue a sale of its campus, including the Reversionary Property, CAU filed *Clark Atlanta University’s Objection and Reservation of Rights as to Debtor’s Application to Employ Jones Lang LaSalle Americas, Inc.* (Docket No. 326) (the “**Broker Objection**”) to ensure that potential bidders and other parties in interest were aware of the CAU Reversionary Interests and the limitations that they impose on the Debtor. See *Broker Objection* at 3, ¶ 8. Specifically, pursuant to the CAU Reversionary Interests, once the Reversionary Property is not being used by the Debtor for educational purposes, it reverts back to CAU’s ownership. Moreover, although CAU has acknowledged (both in pleadings, in Court, and in discussions with parties in interest) that it would be willing to

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<sup>2</sup> Characterizations in this Objection of the CAU Reversionary Interests are used for ease of reference and explanation only, and shall in no way alter the legal substance or effect of the Deeds.

consider consenting to a transaction that would fall outside the scope of the CAU Reversionary Interest limitations, CAU's consent is provided at CAU's sole and absolute discretion.

5. CAU now understands that The Atlanta Development Authority d/b/a Invest Atlanta ("**Invest Atlanta**") desires to buy a portion of the Debtor's campus that includes some, but not all, of the Reversionary Property (the "**Sale Property**"). See Exhibit B. CAU further understands that Invest Atlanta wishes to purchase and the Debtor wishes to sell the Sale Property without first obtaining CAU's consent. See Exhibit C.

6. Although CAU is interested in working with Invest Atlanta towards a plan to redevelop a portion of the Debtor's campus that will benefit CAU, the Atlanta University Center, and the City of Atlanta, by seeking authority to sell the Reversionary Property without CAU's consent, the Debtor is impermissibly seeking to sell property that the Debtor lacks the authority to sell. Said differently, the Debtor is requesting authority to sell an interest in property that is not property of the Debtor's bankruptcy estate. Such an outcome is not authorized under the Bankruptcy Code and this Court lacks authority to effectuate the relief.

7. Accordingly and for the reasons more fully explained below, by this Objection, CAU requests the Court (i) deny the Debtor's Motion to Sell (ii) stay the sale process and (iii) grant CAU relief from stay to enforce the CAU Reversionary Interests.

## II. OBJECTION TO SALE

### A. *Standing*

8. As a preliminary matter, CAU has standing to object to the Motion to Sell.

9. "[A]t an irreducible minimum, Art. III requires the party who invokes the court's authority to 'show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant.'" *E. Air Lines, Inc. v. F.A.A.*, 772 F.2d 1508,

1512 (11th Cir. 1985) (citing *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982) (citation omitted)).

10. Here, if the Court were to enter an order granting the Motion to Sell, CAU's interests in the Reversionary Property would be directly and irreparably injured.

11. Therefore CAU has standing to object to the Motion to Sell.

***B. The Debtor Cannot Sell What it Does Not Own.***

12. Because the Debtor does not own the right to sell the Reversionary Property, the Debtor lacks authority to transfer title to the Reversionary Property.

13. Section 363(b) of the Bankruptcy Code authorizes a debtor in possession to sell property of the estate. 11 U.S.C. § 363(b).

14. Property of the estate includes all legal or equitable interests of the debtor in property as of the commencement of the case. 11 U.S.C. § 541; *United States v. Whiting Pools, Inc.*, 462 U.S. 198 (1983) (A debtor's right to redeem foreclosed property constitutes property of the estate.).

15. Although the Bankruptcy Code defines property of the estate very broadly, state law rather than bankruptcy law determines whether a debtor *has* a property right and the *nature* or attributes of the property right. *Butner v. United States*, 440 U.S. 48, 54–55 (1979) (“Congress has generally left the determination of property rights in the assets of a bankrupt’s estate to state law . . . Property interests are created and defined by state law.”); *Sec. Mortgage Co. v. Powers*, 278 U.S. 149, 153–54 (1928) (“The validity of the lien claimed by the Mortgage Company for attorney’s fees must be determined by the law of Georgia; for the contract was there made and was secured by real estate there situate.”); *Board of Trade of the City of Chicago v. Johnson*, 264 U.S. 1, 10 (1924).

16. Thus, in order for an interest to be property of the Debtor's estate, as of the petition date the Debtor must have had the property interest, as defined by Georgia law.

17. Here Georgia law defines an important "attribute" of the Reversionary Property—the Debtor holds the property subject to the CAU Reversionary Interests.

18. Using an analogy that has taught many lawyers property law, the Debtor holds only certain of the bundle of sticks. And in this scenario, the sticks the Debtor holds, and thus the sticks that became property of the Debtor's estate, exist only in the Debtor's hands. This is true because of the main facets of property ownership—the right to *use*, the right to *exclude*, and the right to *dispose*—as of the petition date the Debtor had the right to *use* the Reversionary Property for educational purposes, and the Debtor had the right to *exclude* others so long as the Debtor used the Reversionary Property for educational purposes, but absent CAU's consent, the Debtor did not have the right to *dispose* of the Reversionary Property. In fact the Debtor has never possessed the right to dispose of the Reversionary Property; and the Debtor's bankruptcy case has not changed, and cannot change that fact.

19. Given the right to dispose of the Reversionary Property never became and is not now property of the Debtor's bankruptcy estate, section 363(b) of the Bankruptcy Code does not authorize the Debtor to sell the Reversionary Property. Accordingly this Court lacks statutory authority to effectuate the relief.

20. CAU's Objection should therefore be sustained.

21. "Where there is a dispute over whether the estate owns the property to be sold, the bankruptcy court should not authorize the sale. Thus, an objection to a sale may be based on an adverse claim of ownership." COLLIER ON BANKRUPTCY ¶ 363.02[1][c] (citing *Darby v. Zimmerman (In re Popp)*, 323 B.R. 260 (B.A.P. 9th Cir. 2005) ("[a] bankruptcy court may not

allow the sale of property as ‘property of the estate’ without first determining whether the debtor in fact owned the property”) (citing *Warnick v. Yassian (In re Rodeo Canon Dev. Corp.)*, 362 F.3d 603, 608–09 (9th Cir. 2004))).

### III. MOTION TO STAY SALE

22. On April 1, 2014 the Court entered the *Order (A) Authorizing and Approving Procedures for the Sale of the Debtor’s Assets (B) Scheduling a Sale, (C) Approving Assumption and Assignment Procedures, (D) Approving Form of Notice; and (D) Granting Related Relief* (Docket No. 352) (the “**Sale Procedures Order**”).

23. The Sale Procedures Order, among other things, established a sale process by which the Debtor would solicit bids, hold an auction (if necessary), objections would be submitted, and a sale hearing would be held.

24. Following the bid process, it has become evident to CAU that the Debtor intends to sell the Reversionary Property to Invest Atlanta without first resolving the CAU Reversionary Interests. *See Exhibit C.*

25. As stated above, absent CAU’s consent, the Debtor lacks the authority to sell the Reversionary Property and this Court lacks authority to authorize such a sale.

26. Thus any order approving the Motion to Sell would be subject to appeal by CAU and a motion to stay pending such appeal.

27. Given CAU would be likely to prevail on such an appeal and a motion to stay pending appeal,<sup>3</sup> CAU requests the Court (through its inherent equitable powers to manage its

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<sup>3</sup> To obtain a stay pending appeal, a party must show that (i) there is a likelihood of success on the merits of the appeal; (ii) the moving party will suffer irreparable harm if the stay is not granted; (iii) the harm to the moving party if the stay is not granted is greater than the injury to

orders and its docket) stay the sale process pending resolution of the CAU Reversionary Interests.

#### IV. MOTION FOR RELIEF FROM STAY

28. CAU further requests that the Court grant CAU relief from the automatic stay for CAU to seek resolution of the CAU Reversionary Interests.

29. Section 362(d)(1) of the Bankruptcy Code provides for relief from the automatic stay “for cause, including the lack of adequate protection.” 11 U.S.C. § 362(d)(1).

30. The Bankruptcy Code does not define the term “cause.” Thus, courts make the determination of cause on a case-by-case basis. *E.g. Fazio v. Growth Dev. Corp. (In re Growth Dev. Corp.)*, 168 B.R. 1009, 1017 (N.D. Ga. 1994). Because the term “cause” is such an “intentionally broad and flexible inquiry,” multitudes of cases exist, all of which offer no precise standards to determine when cause exists to successfully obtain relief from the stay. *In re Bell*, 215 B.R. 266, 275 (Bankr. N.D. Ga. 1997); *accord Baldino v. Wilson (In re Wilson)*, 116 F.3d 87, 90 (3d Cir. 1997). Bankruptcy courts are therefore guided by “the particular circumstances of the case and . . . considerations that under the law make for the ascertainment of what is just to the claimants, the debtor and the estate.” *Foust v. Munson S.S. Lines*, 299 U.S. 77, 83 (1936).

31. Factors to consider in determining whether “cause” exists include (i) whether the bankruptcy estate will sustain great prejudice if relief from the stay is granted and (ii) whether the hardship on the nondebtor party from the continuation of the stay considerably outweighs the

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the opposing party if the stay is granted; and (iv) the public interest would not be adversely affected by the issuance of the stay. The decision as to whether to grant a stay of an order pending appeal is within the court’s discretion.

hardship to the debtor if the stay is lifted. *Egwineke v. Robertson (In re Robertson)*, 244 B.R. 880, 882 (Bankr. N.D. Ga. 2000).

32. Here, cause exists because (i) the Debtor's conduct demonstrates that the Debtor does not intend to use the Reversionary Property in accordance with the CAU Reversionary Interests and (ii) now that the Debtor has made that decision, a determination of the CAU Reversionary Interests is critical to preventing irreparable harm to CAU's property rights. Cause further exists because, given the posture of the Debtor's bankruptcy case, resolution of the CAU Reversionary Interests is a necessary element of any resolution of this bankruptcy case.

33. CAU will suffer extreme hardship if the Court does not grant CAU relief from stay to resolve the CAU Reversionary Interests and the bankruptcy estate requires such resolution. Thus cause exists to grant CAU relief from the stay.

**V. WAIVER OF 14 DAY STAY**

34. CAU requests that the Court waive the 14-day stay provided in rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure otherwise applicable to CAU's request for relief from the automatic stay.



**VI. CONCLUSION**

WHEREFORE, for the reasons stated above, CAU respectfully requests the Court (i) deny the Debtor's Motion to Sell (ii) stay the sale process (iii) grant CAU relief from stay to enforce the CAU Reversionary Interests and (iv) waive the 14-day stay provided rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure otherwise applicable to CAU's request for relief from the automatic stay.

DATED: May 28, 2014

**ALSTON & BIRD LLP**

By: /s/ David A. Wender  
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*Attorneys for Clark Atlanta University*

**EXHIBIT A**

**[DEEDS]**

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#870492

STATE OF GEORGIA,

FULTON COUNTY.

THIS INDENTURE, made this 10th day of February, in the year of our Lord One Thousand and Nine Hundred and Forty, between The Trustees of The Atlanta University, a corporation, of the State of Georgia and County of Fulton, of the first part, and Morris Brown College, a corporation, of the State of Georgia and County of Fulton of the second part.

WITNESSETH: That the said party of the first part, for and in consideration of the sum of One Dollar, and for the purposes herein set forth, in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed and by these presents does grant, bargain, sell and convey unto the said party of the second part all that tract and parcel of land lying and being in Land Lot 110 of the 14th District of originally Henry, now Fulton County, Georgia, and more fully described as follows:

Beginning at the northwest corner of Vine and Hunter Streets, running thence west along the north side of Hunter Street six hundred and fifty (650) feet, more or less, to the east side of Sunset Avenue; thence north along the east side of Sunset Avenue six hundred and fifty (650) feet; thence east parallel with Hunter Street six hundred and fifty (650) feet, more or less, to the west side of Vine Street; thence south along the west side of Vine Street six hundred and fifty (650) feet to the beginning point.

The above property is conveyed subject to the use by A. S. Huth of house and property now occupied by him, so long as he shall remain in the employ of the Atlanta University.

Also all that tract or parcel of land lying and being in Land Lot 83 of the 14th District of originally Henry, now Fulton County, Georgia, and being more fully described as follows:

43.51 Vine St. NW. Beginning at the northeast corner of Vine and University Streets, running thence north along the east side of Vine Street one hundred (100) feet; thence east one hundred (100) feet; thence north parallel with Vine Street fifty (50) feet; thence west one hundred (100) feet to Vine Street; thence north along the east side of Vine Street one hundred and fifty (150) feet; thence east, parallel with University Street, two hundred and thirty-seven and five-tenths (237.5) feet; thence south, parallel with Vine Street, three hundred (300) feet to the north side of University Street; thence west along the north side of University Street two hundred and thirty-seven and five-tenths (237.5) feet to the beginning point.

Also all that tract or parcel of land lying and being in Land Lot 83 of the 14th District of originally Henry, now Fulton County, Georgia, and more fully described as follows:

Beginning at the northeast corner of Hunter and Vine Streets and running thence north along the east side of Vine Street two hundred and fifty (250) feet to the southeast corner of Vine and University Streets; thence east along the south side of University Street two hundred (200) feet; thence south, parallel with Vine Street, one hundred (100) feet; thence east, parallel with Hunter Street, one hundred and fifty (150) feet to the west side of Walnut Street; thence south along the west side of Walnut Street one hundred and fifty (150) feet to the northwest corner of Walnut and Hunter Street; thence west along the north side of Hunter Street three hundred and fifty (350) feet to the beginning point.

The above property is conveyed subject to the condition that Morris Brown College shall use the same for educational purposes, to wit: Undergraduate work in the fields of the Arts and Sciences, except that nothing in this clause is to be construed as prohibiting Morris Brown College from offering graduate course in Theology, if it chooses to do so. If at any time the said Morris Brown College shall cease to use said property for the particular educational purposes above set forth, the title to said property shall revert to and become vested in the Grantor or its successors.

TO HAVE AND TO HOLD the said bargained premises, together with all and singular appurtenances thereto, to the same being, belonging or in any wise pertaining to the only proper use, benefit and behoof of it, the said party of the second part, IN FEE SIMPLE.

IN WITNESS WHEREOF, the said party of the first part has hereunto set its hand and affixed its seal, the day and year above written.

Signed, sealed and delivered in the presence of: C. S. Nabrit (N.P. Seal of Georgia, State at Large.)  
Viola L. Jenson (N.P. Seal of Georgia, State at Large.)  
Notary Public. (Jenson, Georgia, State at Large.)

THE TRUSTEES OF THE ATLANTA UNIVERSITY (SEAL)  
By: Rufus E. Clement (CORP. SEAL) President  
By: Florence M. Read Secretary

Filed: 11:59 P.M. Feb. 10, 1941  
Recorded: Feb. 22, 1941

J. H. Simmons C.S.C.

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extreme corner of the lot farthest from the side street or road.

3. The said lot shall not be used except for residence purposes.

4. The above described property may not be subdivided so as to make any lot have less frontage than that shown on said plat, and only one residence (exclusive of servants' houses) may be erected on any one lot. No servant's house or temporary improvements shall be built and occupied on any lot prior to the erection of the residence. No residence shall be constructed on any lot fronting on Club Drive which shall cost less than \$8,000.00, nor on any lot fronting on Ballaire Drive which shall cost less than \$7,000.00.

5. The said land shall not be sold, donated, lent, rented or leased to negroes or persons of color.

6. The said land shall not, as a whole, nor shall any part thereof, be devoted to, or used either directly or indirectly, for hospital, apartment, sanitarium, or cemetery purposes, or as an adjunct or accessory to either of these purposes.

7. The first party reserves to itself, its successors and assigns, the right to lay or erect and maintain, or to authorize the laying, erecting and maintaining, at its option, any necessary sewers or water pipes or other public utilities for the use or benefit of lots in said subdivision, in or over any lot or in any of the streets, without compensation to any lot owner, and thereafter to enter upon said premises for the purpose of repairing and maintaining of the same wherever this may be necessary.

8. No placard or advertising sign, other than such as relate to the sale or leasing of any lot shall be erected or maintained on any lot or any building thereon.

9. For a violation of any of the terms of said restrictions and covenants by the said second party, or any person holding or claiming under or through said second party, the right is expressly reserved to the Carlton Operating Company, Inc., its successors or assigns, to proceed by law or in equity to compel a compliance with the terms thereof. If at any time there shall be constructed on said land any structure contrary to the foregoing restrictions, the owner of said land shall, upon demand of the Carlton Operating Company, Inc., its successors or assigns, remove such structure or at once change the same so as to make it comply with these restrictions; and upon failure to do remove or change the same the Carlton Operating Company, Inc., its successors or assigns, shall have the right to enter upon said land and at the expense of the owner remove or change the same. The failure to properly enforce these conditions or restrictions, or any of them, shall at no time bar enforcement, but in spite of any and all laws the Carlton Operating Company, Inc., its successors or assigns, may at any time enforce each and all of these restrictions and provisions, which shall be binding upon said second party, and said party's heirs, successors, administrators, executors and assigns, and whether or not the said restrictions are contained in any

tion to the above shall be incorporated in all other surveys and plats of any and all lots shown on the mentioned plat, except Lots 1, 2 and 3 of Block "A" of said plat, to which these restrictions shall not apply.

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns, forever, IN FAIR SIMPLE.

AND THE SAID party of the first part, for itself, its successors and assigns, will warrant and forever defend the right and title to the above described property, unto the said party of the second part, his heirs and assigns, against the claims of all persons owning, holding, or claiming by, through or under the said party of the first part.

IN WITNESS WHEREOF, the said party of the first part has hereunto set its hand and its corporate seal, the day and year above written.

Signed, sealed and delivered in the presence of:

Francis B. Watts (In F. State at Large, M. F. State at Large, Atlanta, Ga.) Com. Exp. 1-6-46

(SEAL) THE CARLTON OPERATING COMPANY, INC.

By Fred F. White Pres.

By Frank C. Wren Treas.

(CORP SEAL)

Recorded in DeKalb Co. Ga. Book 661, Page 39.

Filed 10:47 A.M. Aug. 31st. 1944. Recorded on Aug. the 10th. 1944.

J. W. Simmons J.S.C.

STATE OF GEORGIA, FULTON COUNTY.

#947350

THIS INSTRUMENT, made this 30th day of August, in the year of our Lord One Thousand Nine Hundred and Forty-four, between The Trustees of The Atlanta University, a corporation, of the State of Georgia and County of Fulton, of the first part, and Morris Brown College, a corporation, of the State of Georgia and County of Fulton of the second part.

WITNESSETH: That the said party of the first part, for and in consideration of the

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sum of One Dollar, and for the purposes herein set forth, in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed and by these presents does grant, bargain sell and convey unto the said party of the second part all that tract and parcel of land lying and being in Land Lot 109 of the 14th District of Fulton County, Georgia, and more fully described as follows:

COMMENCING at a point 217'-4" from the southwest corner of Inatnall and Hunter Streets, S. W., and extending thence west on the south side of Hunter Street a distance of 169'-9", thence at an angle of 90 degrees south 383'-0", thence east 169'-9" and parallel to Hunter Street, thence north a distance of 383'-0" to beginning point.

The above property is conveyed subject to the condition that Morris Brown College shall use the same for educational purposes, to wit: Undergraduate work in the fields of the Arts and Sciences, except that nothing in this clause is to be construed as prohibiting Morris Brown College from offering graduate courses in Theology, if it chooses to do so. If at any time the said Morris Brown College shall cease to use said property for the particular educational purposes above set forth, the title to said property shall revert to and become vested in the Grantor or its successors.

TO HAVE AND TO HOLD the said bargained premises, together with all and singular the rights, members and appurtenances thereof, to the said being, belonging or in any wise appertaining to the only proper use, benefit and behoof of it the said party of the second part, IN FEE SIMPLE.

IN WITNESS WHEREOF, the said party of the first part has hereunto set its hand and affixed its seal, the day and year above written.

Signed, sealed and delivered in the presence of

Evelyn L. Jenkins

C. J. Lebritt

Notary Public, Georgia, State at Large.  
My Commission Expires Jan. 23, 1945.  
(N.F. SEAL)

THE TRUSTEES OF THE ATLANTA UNIVERSITY (SEAL)

By Rufus E. Clement  
President

By Florence M. Read  
Secretary

(JURE SEAL)

GEORGIA :

1947382

FULTON COUNTY :

THIS INSTRUMENT Made this the 1st day of August, 1944, by and between H. E. Staley as attorney in fact for A. L. Milligan, party of the first part, and H. E. Staley, a resident of Marion County, Virginia, party of the second part,

WITNESSETH: That

WHEREAS, under date of January 1, 1923 A. L. Milligan executed and delivered to H. E. Staley a deed to secure debt, said deed being recorded in Book N, page 277, of the records of Milton County, Georgia (now Fulton County, Georgia), said deed having been given to secure a note of \$3250.00 due January 1, 1928. Said note provided that it should become due and collectible immediately upon default in payment of the same; and

WHEREAS, the said note was due January 1, 1928 and is unpaid, together with interest and costs; and

WHEREAS, said deed to secure debt provided that in case the debt thereby secured shall not be paid that it becomes due by reason of default as above set out. Said deed to secure debt provides that the grantee therein may sell the said property thereby conveyed at auction at the usual place of conducting sales at the courthouse in the county where the land lies in said State to the highest bidder for cash, upon first giving four weeks notice of the time, terms and place of such sale by advertisement once a week in a newspaper published in Fulton County, Georgia, all other notice being thereby waived, and thereupon execute and deliver to the purchaser at such sale a sufficient conveyance of said premises in Fee Simple, which conveyance shall contain recitals as to the happening of the default upon which the execution of the power of sale therein granted depends and by said deed the grantor therein constituted and appointed the grantee therein the agent and attorney in fact of the grantor therein to make such recitals and covenanted and agreed that the recital to be made by the grantee therein should be binding and conclusive upon such grantee therein, his heirs and assigns, and

WHEREAS, H. E. Staley in the due exercise of the powers contained in the said deed to secure debt during the legal hours of sale on the first Tuesday in August, that is August 1, 1944 did offer said property for sale as the property of A. L. Milligan at auction to the highest bidder for cash in front of the courthouse door in Fulton County, Georgia after first advertising the time, place and terms of said sale in a newspaper published in Fulton County, Georgia, namely: the Fulton County Daily Report, on July 5th, 13th, 20th and 27th, 1944, and the grantee herein paid for said property the sum of One Thousand and No/100 (\$1,000.00) Dollars, that being the highest and best bidder and the property was thereupon knocked off to the grantee herein

NOW, THEREFORE, in consideration of the premises and in consideration of the sum of

Form No. 314 WARRANTY DEED (Long Form)

2003728  
STATE OF GEORGIA, County of F U L T O N

THIS INDENTURE, Made this 29th day of JUNE in the Year of Our Lord One Thousand Nine Hundred and SIXTY-SIX between TRUSTEES OF ATLANTA UNIVERSITY, a corporation, of the State of GEORGIA and County of FULTON of the first part, and MORRIS BROWN COLLEGE, a corporation, of the State of GEORGIA and County of FULTON of the second part.

WITNESSETH: That the said party of the first part, for and in consideration of the sum of TEN (\$10.00) DOLLARS AND OTHER VALUABLE CONSIDERATIONS, in hand paid, at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said party of the second part, its successors, heirs and assigns, all that tract or parcel of land lying and being in Land Lots 109 and 84 of the 14th District of Fulton County, Georgia, as shown on survey by A. R. Roberts, Reg. Engr., dated April 4, 1966, recorded in Plat Book 85, page 58, Fulton County Records and more particularly described as follows:

BEGINNING at a reference point formed by the intersection of the Southwestern side of Tatnall Street and the South side of West Hunter Street, if said streets formed an angle instead of a curve, said reference point being identified by an iron pin on the existing curb line shown by said survey as the "Original Street Corner"; running thence West along the existing curb line on the South side of West Hunter Street, two hundred seventeen and thirty-three hundredths (217.33) feet to an iron pin; thence South one hundred seventy-four and six tenths (174.6) feet to a point which point is the beginning point of the property being described in this deed; running thence South one hundred seventy-six (176) feet to the North edge of an asphalt driveway; running thence East along said North edge of said asphalt driveway, one hundred sixty-six and twenty-five hundredths (166.25) feet to an iron pin on the land lot line dividing Land Lots 109 and 84; thence North along said land lot line eighty-three (83) feet to an iron pin; thence West one hundred five (105) feet to an iron pin; thence North ninety-three (93) feet to an iron pin; thence West sixty-one and twenty-five (61.25) hundredths feet to the point of beginning.

The above property is conveyed subject to the condition that Morris Brown College shall use the same for educational purposes, to-wit: undergraduate work in the fields of the Arts and Sciences, except that nothing in this clause is to be construed as prohibiting Morris Brown College from offering graduate courses in theology, if it chooses to do so. If, at anytime, the said Morris Brown College shall cease to use the said property for the particular educational purposes above set forth, the title to said property shall revert to and become vested in the grantor or its successors.

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TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said part y of the second part, its successors heirs and assigns, forever, in Fee Simple.

AND THE SAID part y of the first part, for its successors, heirs, executors and administrators, will warrant and forever defend the right and title to the above described property, unto the said part y of the second part, its successors against the claims of all persons whomsoever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set its hand and seal the day and year above written.

Signed, sealed and delivered in presence of:

*Heber S. Johnson*

*Frank W. ...*

*E. M. ...*

TRUSTEES OF ATLANTA UNIVERSITY (Seal)

BY *James E. ...* President (Seal)

ATTEST: *Orly ...* Secretary (Seal)



FILED FULTON CO. GA.

RECORDED FULTON CO. GA.

JUN 19 1 53 PM '58

JUN 22 '58



CLERK SUPERIOR COURT

4616 PAGE 504

14798/245

STATE OF GEORGIA  
COUNTY OF FULTON

GEORGIA, FULTON COUNTY  
FILED AND RECORDED  
91 DEC 11 PM 1:58  
JUANITA HICKS  
CLERK, SUPERIOR COURT

Fulton County, Georgia  
Real Estate Transfer Tax  
Paid \$ 0  
Date 12-11-91  
JUANITA HICKS  
Clerk, Superior Court  
By: [Signature]  
Deputy Clerk

DEED OF GIFT

THIS INDENTURE, made as of this 11 day of December, 1991, between CLARK ATLANTA UNIVERSITY, INC., a Georgia non-profit corporation as party of the first part (hereinafter referred to as "Grantor"), and MORRIS BROWN COLLEGE, a Georgia non-profit educational corporation as party of the second part (hereinafter referred to as "Grantee") (the words "Grantor" and "Grantee" to include their respective heirs, legal representatives, successors and assigns where the context requires or permits except as otherwise expressly provided herein);

WITNESSETH THAT,

WHEREAS, on July 1, 1988, the corporate charters of Atlanta University, Inc., a Georgia non-profit corporation (hereinafter referred to as "AUI") and Clark College, Inc., a Georgia non-profit corporation (hereinafter referred to as "CCI") were amended to vest full control of their respective non-profit corporations in the Grantor and the Board of Trustees of Grantor. In June of 1991, Grantor received the accreditation necessary to operate the Grantor as a Georgia non-profit corporation whose constituents are AUI and CCI and to carry on the business of both educational corporations; and

WHEREAS, pursuant to the above, Grantor has the authority to execute this Deed of Gift on behalf of AUI; and

WHEREAS, prior to the establishment of Grantor, the Board of Trustees of AUI granted approval of and had intended to convey all those tracts or parcels of real property located in the City of Atlanta, Land Lots 84 and 109 of the 14th District, Fulton County, Georgia, and described in Exhibit "A", attached hereto and incorporated herein by this reference (hereinafter referred to as the "Land"), to the Grantee; and

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WHEREAS, notwithstanding the intent of the Board of Trustees of AUI, there are no conveyance documents of record in the Fulton County records which reflect the conveyance of the Land to the Grantee; and

WHEREAS, Grantee desires to obtain and AUI has agreed to reconvey the Land to the Grantee pursuant to the terms and conditions of this Deed of Gift; and

NOW THEREFORE, for the educational purposes set forth below and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, Grantor has remised, conveyed and forever QUITCLAIMED and by these presents does remise, convey and forever QUITCLAIM unto Grantee all of Grantor's right, title, and interest in and to the Land, SUBJECT TO the condition that the Grantee shall use the Land for educational purposes, to wit: undergraduate work in the fields of the Arts and Sciences, except that nothing in this clause shall be construed as prohibiting the Grantee from offering graduate courses in theology if the Grantee so choses. If at any time the Grantee shall cease to use the Land for the particular educational purposes set forth above, the title to the Land shall revert to and become vested in the Grantor or its successors;

TOGETHER WITH all buildings, structures, and improvements thereon and all rights, members, easements, and appurtenances appertaining to the Land and all right, title, and interest of Grantor in and to alleys, streets, and rights-of-way adjacent to or abutting the Land, including without limitation, that certain easement granted by Grantor to Grantee pursuant to the terms and conditions of that certain easement agreement dated as of even date herewith, executed between Grantor and Grantee and to be recorded in the Fulton County, Georgia records (the Land, together with the foregoing, is hereinafter referred to as the "Property");

TO HAVE AND TO HOLD the said bargained premises, together with all and singular the rights, members and appurtenances thereof, to the same being, belonging or in any wise appertaining to the only proper use, benefit and behoof of Grantee, IN FEE SIMPLE.

147986246

IN WITNESS WHEREOF, Grantor has caused this Deed of Gift to be duly executed under seal on the day, month, and year first above written.

Signed, sealed, and delivered in the presence of:

Hattie S. Bell  
Unofficial Witness

Spencer J. Stafford  
Notary Public

My Commission Expires:  
Notary Public, DeKalb County, Georgia  
My Commission Expires Sept. 29, 1992

[NOTARIAL SEAL]

GRANTOR:

CLARK ATLANTA UNIVERSITY, INC.,  
a Georgia non-profit corporation

By: Thomas H. Coyle, Jr.  
Its President

Attest: Darin Smith  
Its Secretary

[CORPORATE SEAL]



BOOK 14796K247

**Exhibit "A"**  
**(Legal Description of Perimeter)**

ALL THAT TRACT or parcel of land lying and being in Land Lots 84 and 109 of the 14th District, City of Atlanta, Fulton County, Georgia, and being more particularly described as follows:

BEGIN at a point which forms the intersection of the southern right-of-way line of M.L.K. Jr. Drive (formerly Hunter Street) (having a variable right-of-way width) and the southwestern right-of-way line of Tatnall Street (having a variable right-of-way width); run thence along said southwestern right-of-way line of Tatnall Street, in a generally southeasterly direction, South  $45^{\circ}07'46''$  East a distance of 227.02 feet to a point located on the western boundary line of property now or formerly owned by Clark Atlanta University; thence leaving said right-of-way line, run along said western boundary line of property now or formerly owned by Clark Atlanta University, in a generally southeasterly direction, South  $00^{\circ}17'53''$  East a distance of 323.68 feet to a point located on the northern boundary line of property now or formerly owned by Oglethorpe Elementary School; thence leaving said western boundary line of property now or formerly owned by Clark Atlanta University, run along said northern boundary line of property now or formerly owned by Oglethorpe Elementary School, the northern end of an alley, and the northern boundary line of property now or formerly owned by Interdenominational Theological Center, Inc., in a generally northwesterly direction, North  $89^{\circ}15'26''$  West a distance of 380.20 feet to a point; thence leaving said northern boundary line of properties, run along the eastern and northern boundary lines of property now or formerly owned by Interdenominational Theological Center, Inc., in a generally northeasterly and northwesterly direction, the following courses and distances: North  $00^{\circ}00'34''$  East a distance of 96.40 feet to a point; North  $89^{\circ}52'15''$  West a distance of 169.75 feet to a point; and North  $00^{\circ}02'16''$  East a distance of 383.00 feet to a point located on the southern right-of-way line of M.L.K. Jr. Drive; run thence along said southern right-of-way line, in a generally southeasterly direction, South  $89^{\circ}52'12''$  East a distance of 387.08 feet to a point which forms the intersection of the southern right-of-way line of M.L.K. Jr. Drive and the southwestern right-of-way line of Tatnall Street, said point being the POINT OF BEGINNING.

The above-described property contains 5.39 acres and is shown as and described according to that certain Survey for C&S/Sovran Trust Company, Lawyers Title Insurance Corporation, and Morris Brown College, prepared by SSI, Walter K. Maupin, Jr., Georgia Registered Land Surveyor No. 2898, dated November 16, 1991, which certain Survey is incorporated herein by this reference and made a part of this description.

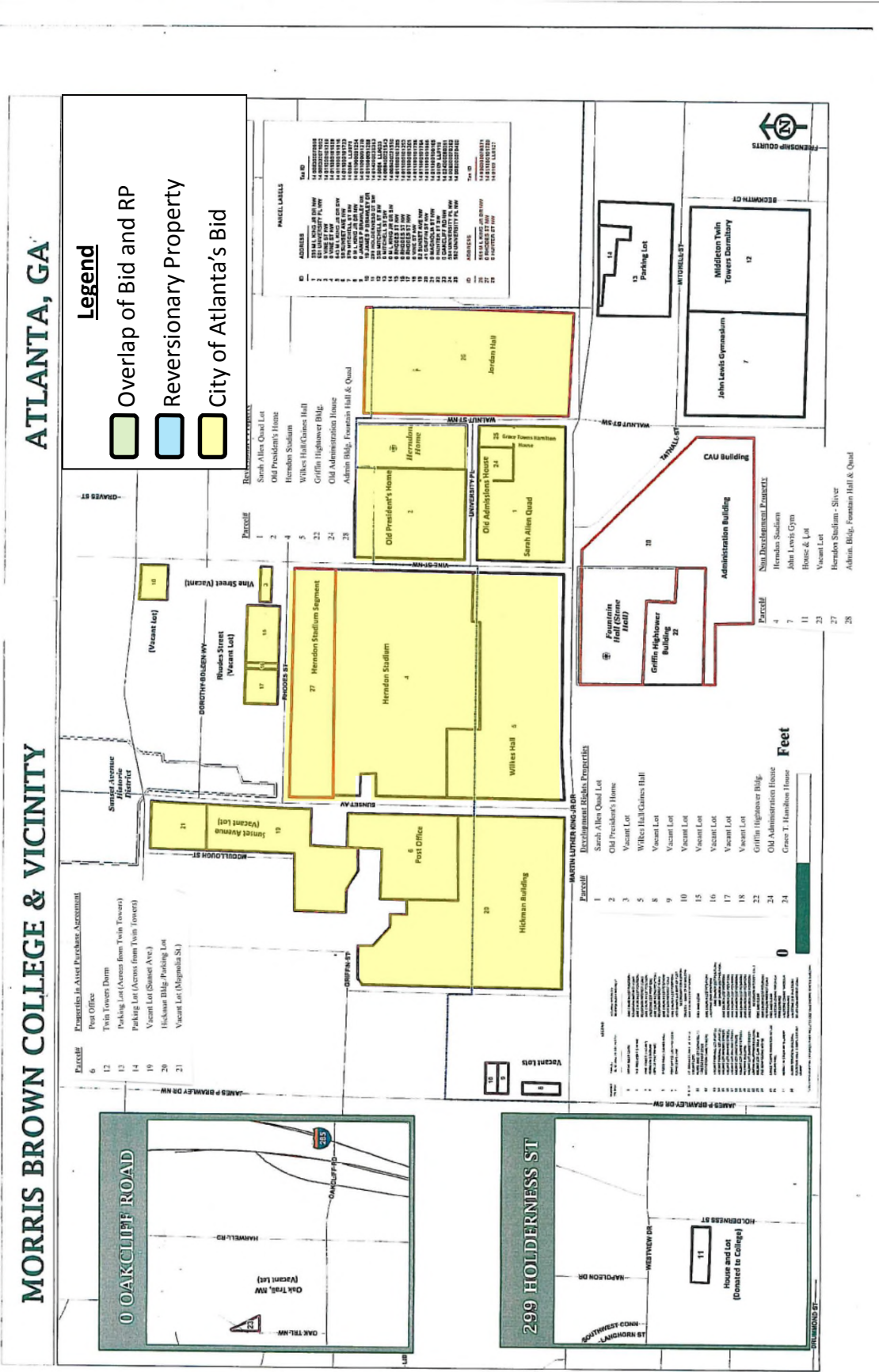
147986248

**EXHIBIT B**

**[MAPS]**











**EXHIBIT C**

**[LETTER]**



ATLANTA

CLEVELAND

DAYTON

WASHINGTON, D.C.

CINCINNATI

COLUMBUS

NEW YORK

**ROY E. HADLEY, JR., ESQ.**  
Direct Line: (404) 407-3650  
Email: [roy.hadley@thompsonhine.com](mailto:roy.hadley@thompsonhine.com)

May 16, 2014

**VIA E-MAIL**

Anne M. Aaronson  
Dilworth Paxson  
1500 Market Street, Suite 3500E  
Philadelphia, Pennsylvania 19102-2101

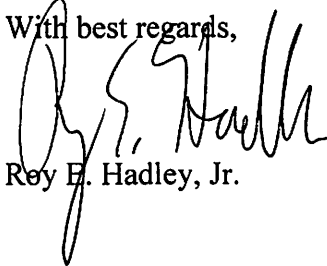
Dear Ms. Aaronson:

Further to my first letter to you of this morning, please be advised that The Atlanta Development Authority is ready to proceed with the purchase and sale of the subject properties as set forth in our revised Bid, dated May 5, 2014, notwithstanding the potential claims of Clark Atlanta University on certain of the parcels. It is my understanding that Friendship Baptist Church is also willing to proceed with the purchase and sale as set forth in the Bid.

Lastly, please note that The Atlanta Development Authority does not have the authority to waive any water and sewer bills currently owed by Morris Brown College.

Please confirm the next steps with respect to the bankruptcy proceedings. Thank you.

With best regards,

  
Roy E. Hadley, Jr.

REH/ksw

cc: Rosalind Rubens Newell  
Ernestine Garey  
Roderick Edmond

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

In re:

Morris Brown College,

Debtor.

CHAPTER 11

CASE NO. 12-71188-BEM

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 28, 2014, a copy of the foregoing *Clark Atlanta University's (I) Objection to the Debtor's Motion to Sell, (II) Motion to Stay the Sale Process, and (III) Motion for Relief from Stay* was served by first class, postage pre-paid U.S. Mail, on those parties listed on Exhibit A attached hereto.

**ALSTON & BIRD LLP**

/s/ Suzanne N. Boyd  
Suzanne N. Boyd (Bar No. 175881)  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, GA 30309-3424  
Telephone: (404) 881-7000  
Facsimile: (404) 881-7777  
suzanne.boyd@alston.com

**EXHIBIT A**  
**[SERVICE LIST]**

<p><b>David S. Weidenbaum</b> Office of the U.S. Trustee 362 Richard B. Russell Bldg. 75 Spring Street, SW Atlanta, GA 30303</p>	<p><b>Oscar B. Fears, III</b> Georgia Department of Law 40 Capitol Square, SW Atlanta, GA 30334</p>	<p><b>E. Penn Nicholson, Esq.</b> One Atlantic Center Fourteenth Floor 1201 West Peachtree Street, NW Atlanta, GA 30309</p>
<p><b>C. Jordan Myers, Esq.</b> McGuire Woods LLP Promenade II 1230 Peachtree Street, N.E. Suite 2100, Atlanta, GA 30309</p>	<p><b>William A. Dupre, IV, Esq.</b> Paul A. Alexander, Esq. Miller &amp; Martin, PLLC Suite 800, 1170 Peachtree St., NE Atlanta, GA 30309</p>	<p><b>Elizabeth A. Harris</b> Assistant Attorney General 40 Capitol Square, SW Atlanta, GA 30334</p>
<p><b>Anne Aaronson</b> Dilworth Paxson LLP 1500 Market Street, Suite 3500E Philadelphia, PA 19102</p>	<p><b>Matthew W. Levin, Esq.</b> Kilpatrick Townsend &amp; Stockton LLP 1100 Peachtree Street, Suite 2800 Atlanta, GA 30309</p>	<p><b>John Moore</b> The Moore Law Group, LLC 1745 Martin Luther King Jr., Dr. Atlanta, GA 30314</p>
<p><b>John M. Guiliano</b> The Bank of New York Mellon 101 Barclay Street, 8 West New York, NY 10286</p>	<p><b>Robert M.D. Mercer</b> Bryan Cave Powell Goldstein LLP One Atlantic Center – 14<sup>th</sup> Floor 1201 West Peachtree Street, NW Atlanta, GA 30309-3488</p>	<p><b>P. Andrew Patterson</b> Smith, Gambrell &amp; Russell, LLP 1230 Peachtree Street, NE Ste. 3100, Promenade Atlanta, GA 30309</p>
<p><b>Ashley Reynolds Ray</b> Scroggins &amp; Williamson 1500 Candler Building 127 Peachtree Street, NE Atlanta, GA 30303</p>	<p><b>James W. Hays</b> Gonzalez Saggio &amp; Harlan LLP 3353 Peachtree Road N.E., Suite 920 Atlanta, GA 30326</p>	<p><b>Gregory H. Worthy</b> Bryan Cave Powell Goldstein LLP One Atlantic Center – 14<sup>th</sup> Floor 1201 West Peachtree Street, NW Atlanta, GA 30309-3488</p>
<p><b>J. Robert Williamson, P.C.</b> Scroggins &amp; Williamson 1500 Candler Building 127 Peachtree Street, NE Atlanta, GA 30303</p>	<p><b>Robert C. Hussle</b> Rogers &amp; Hardin LLP 2700 International Tower 229 Peachtree Street Atlanta, GA 30303</p>	<p><b>Richard Sinkfield</b> Rogers &amp; Hardin LLP 2700 International Tower 229 Peachtree Street Atlanta, GA 30303</p>
<p><b>William H. Arroyo</b> William H. Arroyo Associates, Esq. 4228 First Ave., Suite 10 Tucker, GA 30084</p>	<p><b>Paul M. Baisier</b> Seyfarth Shaw LLP 1075 Peachtree Street, NE Suite 2500 Atlanta, GA 30309</p>	<p><b>S. Jeffrey Rusbridge</b> Dyer &amp; Rusbridge, PC 291 E. Main St. Canton, GA 30114</p>
<p><b>Internal Revenue Service</b> 401 W. Peachtree St. NW Atlanta, GA 30308</p>	<p><b>Georgia Power</b> P.O. Box 105090 Atlanta, GA 30348-5090</p>	<p><b>Jacqueline Pollard</b> 4725 Walton Crossing, SW, Apt. 2119, Atlanta, GA 30331-6295</p>

<p><b>Gloria Anderson</b> 560 Lynn Valley Rd Atlanta, GA 30311</p>	<p><b>Toledo A. Riley</b> 462 West Kildare Ave. NW Atlanta, GA 30318</p>	<p><b>Hector C. Butts</b> 3266 Wyndham Parkway Decatur, GA 30034</p>
<p><b>Vivian H. El-Amin</b> 1344 Cascade Falls Court SW Atlanta, GA 30311</p>	<p><b>Mattie Sherrell</b> 4670 Santa Fe Trail Atlanta, GA 30331</p>	<p><b>Morris, Manning &amp; Martin, LLP</b> 1600 Atlanta Financial Center 3343 Peachtree Rd, NE Atlanta, GA 30326</p>
<p><b>Todd Blackburn</b> 230 Pine Knoll Court Ellenwood, GA 30294</p>	<p><b>Nasrolah R. Farokhi</b> 1644 Arbor Green Ct. N.W. Kennesaw, GA 30152</p>	<p><b>Jamie V. Mitchell</b> 1310 Aniwaka Ave. SW Atlanta, GA 30311</p>
<p><b>Leroy Frazier</b> P.O. Box 788 Pine Lake, GA 30072-0788</p>	<p><b>Epstein Becker &amp; Green, P.C.</b> 945 East Paces Ferry Road Suite 2700 Atlanta, GA 30326</p>	<p><b>Hollowell Foster Gepp</b> 730 Peachtree St. Suite 750 Atlanta, GA 30308</p>
<p><b>JoAnn Googer</b> 2632 Patrick Ct SE Atlanta, GA 30317</p>	<p><b>Esmond Skeete</b> 6588 Pole Creek Blvd. Lithonia, GA 30058</p>	<p><b>Advance Learning Network</b> 9339 22nd Avenue N.W. Seattle, WA 98117</p>
<p><b>Georgia Natural Gas</b> PO Box 440667 Kennesaw, GA 30160-9512</p>		