

**EXCLUSIVE AUTHORIZATION AND RIGHT TO SELL
LISTING AGREEMENT (COMMERCIAL IMPROVED PROPERTY)**

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Are you currently a party to any agreement with another real estate broker? YES NO

THIS AGREEMENT is made and entered into and effective as of this ____ day of _____, 20____ (“Effective Date”) by and between the undersigned OWNER, its successors and/or assigns (“Owner”), and the undersigned BROKER, its licensees, successors and/or assigns (*except as limited herein*) (“Broker”).

1. **Parties.** The parties to this Agreement are:

OWNER: _____

BROKER: _____

2. **Property.** This Agreement pertains to that certain property located at _____ in [City] _____, in _____ County, Mississippi, as more particularly described in an exhibit attached to this Agreement (if any) (“the Property”).

3. **Listing Period.** The Listing Period shall commence on _____ and expire at midnight on _____ (“the Listing Period”).

4. **Exclusive Listing Agreement.** Owner hereby employs and grants Broker the exclusive and irrevocable right, acting as Agent of Owner, to show and offer for sale or exchange the Property during the Listing Period, subject to the terms and conditions set forth in this Agreement.

5. **Listing Price.** \$ _____.

6. **Special Terms.** Special Terms (if any) are attached as an exhibit hereto.

7. **Internet Listing Services.** Broker is a participant of several listing services, including internet-based services, and listing information regarding the Property will be provided to such listing services and/or internet providers to be published and disseminated to the public. Broker is also authorized to report the sale following a closing as Broker, in its sole discretion, deems appropriate. Broker is authorized to cooperate with other licensed Brokers/Agents to sell this Property and to share the compensation resulting from the sale with any Selling Broker on a basis solely determined by the Listing Broker. Broker is hereby authorized to [CHECK ALL THAT APPLY]:

Offer other licensed brokers cooperation and compensation, but not sub-agency.

*Initials _____

- Offer other licensed brokers sub-agency and compensation.
- Act in the capacity of a Disclosed Dual Agent.

8. **Compensation.** Owner hereby agrees to compensate Broker, irrespective of agency relationship(s), as follows:

- (a) A fee of _____ % of the selling price OR a fee of \$ _____ and an Administrative fee of \$ _____ if the Property is sold during the term hereof (or any extension thereof) on the terms herein set forth or any other price and terms Owner may accept; OR
- (b) A fee of _____ % of the Listing Price OR a fee of \$ _____ and an Administrative fee of \$ _____ if the Property is withdrawn from sale, transferred, conveyed, leased or rented without the consent of Broker, or made unmarketable by Owner's voluntary act during the term of this Agreement or extension thereof.
- (c) The compensation provided for in subparagraph (a) above shall be paid by Owner to Broker if the Property, or any part thereof, is sold, conveyed, or otherwise transferred within _____ days after the termination of the Listing Period (or any extension thereof) ("the Protection Period") to anyone to whom the Property was shown by Broker ("prospective purchasers") provided Broker has delivered to Owner written notice, including the names of said prospective purchasers who have considered purchase of the Property through Broker's efforts, before or upon termination of this Agreement (or any extension thereof).
- (d) Owner shall be obligated to pay the compensation provided for in subparagraph (a) if, in the event of breach by Buyer, Owner successfully secures specific performance by Buyer.

9. **Deposit and Escrow of Funds.** Broker [or _____] is authorized to accept and hold on Owner's behalf any deposit of earnest money set forth in the contract between the parties. In the event Buyer's earnest money is forfeited, one-half (1/2) of the same shall be retained by or paid to Broker as their compensation, provided that Broker's portion of any such forfeited deposit shall not exceed the amount of the above-referenced compensation, and the remainder shall be delivered to Owner.

10. **[Check all that apply]**

- Owner authorizes Broker to place a For Sale/Sold sign on the Property.
- Owner authorizes Broker to take and utilize interior and exterior photographs of the Property and improvements for listing, advertising and appraisal purposes.
- Owner authorizes Broker to disclose to buyers or cooperating brokers the existence of offers on the Property.
- Owner authorizes Broker to obtain mortgage information relating to the Property.
ACCT# _____
Mortgage Company _____
Address _____

11. **Improvements.** All improvements and appurtenances presently located upon the Property are included in the Listing Price, excluding the following (may be listed on attached exhibit):

12. **Broker Responsibility; Limitations.** Broker has the fiduciary responsibilities to Owner of loyalty, confidentiality, obedience, disclosure, full accounting and the duty to use skill, care and diligence in marketing Property.

13. **Owner's Representations.** Owner represents and covenants that it (a) will cooperate with Broker to market and sell the Property to prospective buyers; and (b) will provide Broker with accurate information regarding the Property (including, but not limited to, accurate and complete information concerning all adverse material facts or defects pertaining to the Property or improvements thereupon). Broker is specifically authorized to release the number of days the Property has been on the market if requested by cooperating brokers and/or prospects, and to disclose whether Owner is in negotiation with another buyer or if there are other offers on the Property if, in the judgment of Broker, this information will aid Broker in getting the highest price and best terms for the Owner. Owner further agrees to permit Broker to reassign it to another agent within the firm for representation should Broker and Owner agree that reassignment is best. *If Owner is an individual*, by signing below, Owner acknowledges that the mandatory **Working With a Real Estate Broker** disclosure form has been fully explained to Owner and Owner acknowledges receipt of a signed copy. In addition, Owner represents and covenants the following as of the Effective Date hereof:

(a) **Organizational Status.** [*If Owner is not an individual*] Owner is a _____, duly organized and in good standing under the laws of the State of _____, and is authorized to do business in the State of Mississippi.

(b) **Authority and Enforceability.** This Agreement constitutes the legal, valid and binding obligation of Owner enforceable in accordance with its terms; Owner has full power and authority to enter into and perform the terms and conditions of this Agreement; Owner has obtained all necessary approvals and consents to the purchase of the Property as contemplated by this Agreement; and the person executing this Agreement for Owner is fully and duly empowered and authorized so to act.

(c) **No Conflict.** The compliance with or fulfillment of the terms and conditions of this Agreement will not conflict with, violate or result in a breach of the terms, conditions, or provisions of, or constitute a default under, any of Owner's organizational documents or any Agreement or agreement to which Owner is a party or by which Owner is otherwise bound.

(d) **Brokers.** There are no real estate or brokerage commissions payable in connection with the transactions contemplated by this Agreement to any party claiming through Owner, or arising out of the actions of Owner, other than the commission payable by Owner to Broker(s) referenced herein including, but not limited to, compensation payable to another Broker under a previous listing agreement or "protection period" clause in a previous agreement.

(e) **Clear Title.** Fee simple title to the Property is vested in Owner; title is good and merchantable of record and title is free of all liens, encumbrances, easements, restrictions, claims of title, leases, adverse possession, condemnation and other matters except the Permitted Encumbrances set forth or identified in any exhibit hereto.

(f) **Condition of Improvements.** Owner is not aware of any structural or other defects, latent or otherwise, in the Improvements, if any, other than those disclosed to Buyer in writing as of the Effective Date.

(g) **Zoning.** [If applicable] The Property is currently zoned _____ under the applicable zoning ordinances of _____, Mississippi.

(h) **Use Authorizations.** To the best of Owner's knowledge, there are presently in effect permanent certificates of occupancy, licenses and permits as may be required for the Property, if any, and, to the best of Owner's knowledge, the present use and occupation of the Property is in compliance and conformity with such certificates of occupancy, licenses and permits. There has been no notice or request of any municipal departments, insurance company or board of fire underwriters (or organization exercising functions similar thereto) or mortgagee directed to Owner and requesting the performance of any work or alteration in respect to the Property which has not been complied with.

(i) **Leases.** Owner shall provide to Broker, within _____ days of the Effective Date of this Agreement (or within a commercially reasonable time if no deadline is stated), copies of complete and accurate rent rolls, if any, reflecting any and all existing leases affecting the Property setting forth with respect to each such lease (i) tenant's name; (ii) commencement and termination dates of the lease term and related renewal or extension terms; (iii) the premises covered by the lease; (iv) rent and other charges payable there-under and the date through which rent/other charges payable there-under have been paid; and (v) the amount of the security deposit required under each lease and held by Owner.

(j) **Contracts or Agreements.** Owner shall provide to Broker, within _____ days of the Effective Date of this Agreement (or within a commercially reasonable time if no deadline is stated), copies of all existing equipment leases, service and vendor contracts, if any, that relate to the operation, management or maintenance of the Property. To Owner's knowledge, there is no default or claim of default or any event which with the passage of time or notice, or both, would constitute a default on the part of any party to any of such contracts or agreements.

(k) **No Other Agreements.** Except for any leases, contracts or agreements disclosed by Owner as set forth hereinabove (the same, if any, being hereby incorporated by reference), there are no leases, service contracts, management agreements or other agreements in force and effect, oral or written, that grant to any person whomsoever or any entity whatsoever any right, title, interest or benefit in or to all or any part of the Property or any rights relating to the use, operation, management, maintenance or repair of all or any part of the Property or any improvements thereupon or furniture, fixtures or equipment included therewith, which will survive a closing pursuant to a purchase and sale agreement or be binding upon any potential buyer.

(l) **Pre-Existing Right to Acquire.** No person or entity has any right or option to acquire

the Property or any portion thereof which will have any force of effect after execution hereof, other than a potential buyer.

(m) **No Assessments.** To the best knowledge of Owner, no assessments (other than ad valorem taxes) have been made against the Property that are unpaid whether or not they have become liens.

(n) **No Pending Matters.** There are no pending or, to the knowledge of Owner, threatened actions, lawsuits or proceedings against Owner by any organization, person, individual or governmental agency with respect to the Property that, if determined adversely to Owner, would materially adversely affect Owner's ability to perform its obligations under this Agreement or that would enjoin or prevent entry into a valid and binding sale and purchase agreement and/or the consummation of any closing nor does Owner know of any basis for such action. There are no outstanding accounts payable relating to the Property that would be binding on a potential buyer of the Property. Owner also has no knowledge of any currently pending application for changes in the zoning applicable to the Property or any portion thereof. Owner is not aware and has not been notified of any pending proceedings that could have the effect of impairing or restricting access between the Property and adjacent public roads and, to the best of the Owner's knowledge, no such proceedings are threatened.

(o) **Bankruptcy.** Owner is solvent and has not made a general assignment for the benefit of creditors or been adjudicated a bankrupt or insolvent, nor has a receiver, liquidator or trustee of Owner or any of its respective properties (including the Property) been appointed or a petition filed by or against Owner for bankruptcy, reorganization or arrangement pursuant to the Federal Bankruptcy Act or any similar federal or state statute, or any proceeding instituted for the dissolution or liquidation of Owner.

(p) **Restrictive Covenants.** To the best of Owner's knowledge, there is no default or any event which, with the passage of time or notice or both, would constitute a default or breach on the part of Owner or on the part of any other party whose property is encumbered by or benefits from any such restriction under any declaration of easements, restrictive covenants or other restrictions affecting the Property.

(q) **Hazardous Substances.** To the best of Owner's knowledge (i) no "hazardous substances", as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act, and the rules and regulations promulgated pursuant thereto, or any other pollutants, toxic materials, or contaminants have been or shall prior to Closing be discharged, disbursed, released, stored, treated, generated, disposed of, or allowed to escape on the Property in violation of applicable law; (ii) no underground storage tanks are located on the Property or were located on the Property and subsequently removed or filled; (iii) the Property has not previously been used as a gas station, cemetery, landfill, or as a dump for garbage or refuse; and (iv) the Property has not previously been and is not currently listed on the Mississippi Department of Environmental Quality's CERCLA/Uncontrolled Sites File List. Owner has not received any notice or demand from any governmental or regulatory agency or authority requiring Owner to remove any hazardous substances or contaminants or toxic materials from the Property.

(r) **Condemnation.** Owner has not been notified that any condemnation or other taking by eminent domain of the Property or any portion thereof has been instituted and, to the best of Owner's knowledge, there are no pending or threatened condemnation or eminent domain proceedings (or proceedings in the nature or in lieu thereof) affecting the Property of any portion thereof or its use.

(s) **Violations.** To the best of Owner's knowledge, there are no violations of law, municipal or county ordinances, building codes or other legal requirements with respect to the Property; the Improvements comply with all applicable legal requirements (including applicable zoning ordinances) with respect to the use, occupancy, and construction thereof.

(t) **Representations.** The representations set forth in this Section are true and correct as of the date of this Agreement and shall survive the termination hereof. None of the representations of Owner in this Agreement contain any untrue statement of a material fact or fail to state a material fact necessary in order to make any representation contained herein not misleading in light of the circumstances in which such representation is made. It is specifically acknowledged and understood by Owner that information furnished to Broker may be made available to other parties unless the information is expressly denoted by Owner to Broker as confidential.

(u) **Indemnification.** Owner agrees to defend, protect, indemnify and hold harmless Broker, its salespersons, agents, licensees, concessionaires, servants or employees from and against all claims or demands, including any action or proceedings brought thereon, and all costs, losses, expenses and liability of any kind relating thereto, including reasonable attorney fees and cost of suit, arising out of or resulting from the injury to or death of any person or damage to the property of any person located on the Property during any act taken or authorized by Broker in the course of marketing and selling the Property and against all claims, disputes, litigation and/or judgments arising by virtue of any incorrect information supplied by Owner, or from any material fact known by Owner which Owner fails to disclose; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or willful act or omission of Broker, its salespersons, agents, licensees, concessionaires, servants or employees. In the event it is determined that Broker was not at fault, then Owner party shall reimburse Broker for all reasonable costs and/or expenses incurred by it defending against such claim or demand.

14. **Miscellaneous.**

(a) This Agreement shall be construed and governed in accordance with the laws of the State of Mississippi. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof and, accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto.

(b) This Agreement is made and entered into at the office of Broker and the agreed venue for any issue, dispute or controversy arising under this Agreement shall be the county in which the principal business office of Broker is located.

(c) In the event any term or provision of this Agreement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning

or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

(d) In the event of any litigation between the parties under this Agreement, the prevailing party shall be entitled to reasonable attorney fees and court costs at all trial and appellate levels. The provisions of this subparagraph shall survive the termination of this Agreement coextensively with all other surviving provisions of this Agreement.

(e) In construing this Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, the use of any gender shall be held to include every other and all genders, and captions and paragraph headings shall be disregarded.

(f) All of the exhibits attached to this Agreement, if any, are incorporated in, and made a part of, this Agreement.

(g) Owner acknowledges that it has not relied upon any promise, statement, representation, omission made or documentation provided by Broker(s), its salesperson(s) and their representatives relating to this transaction including, but not limited to, value of the Property; the decision to sell or purchase the Property; the terms or conditions of the sale, tax or legal considerations or liability, size or condition of the Property; the necessity or cost of repairs; the presence or lack thereof of UFFI insulation; the presence or lack thereof of Exterior Insulated Finish Systems (E.I.F.S.); previous flooding or location in a flood zone; effect of or location within Mississippi State Tidelands or Federal wetlands; presence of expansive soils; matters pertaining to financing; the presence or absence thereof of acceleration clauses or tax or balloon notes or any other conditions in existing agreements pertaining to the Property, if any; matters that could be revealed through a survey, title search or inspection; the existence of hazardous or toxic materials or environmental conditions; existing zoning, subdivision or other laws, regulations or rules affecting the Property and its use; the appraised or future value of the Property; the existence or history relating to pests, including, but not limited to, wood-destroying insects; building products or construction techniques; or tax laws or legal consequences of a contemplated transaction.

(h) Any reference to “days” within this Agreement shall mean “calendar days.”

(i) (**Select if applicable**) Assignment of this Agreement shall be prohibited unless written consent of the non-assigning party is obtained.

15. **Entire Agreement; Successors and Assigns; Amendment; Binding Effect.** This Agreement constitutes the entire understanding and agreement between the parties, and there are no understandings, agreements, representations or warranties except as specifically set forth herein. This Agreement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought. Owner acknowledges that the failure of Owner to execute a renewal or extension of the listing contract will result in the Broker having to remove Owner’s listing from Broker’s marketing program, including internet sites. This Agreement shall be binding upon the parties hereto and their respective successors and assigns, except as limited herein.

16. **Disclosure of Agency Relationship (Check One Box):**

The Broker and its salespersons represent the Owner only as their Client.

The Broker and its salespersons represent the Owner and may represent the Buyer as dual agents by mutual agreement following execution by all parties of a Dual Agency Confirmation.

17. **Notices.** Except as otherwise provided herein, all notices, including demands, offers, counteroffers, acceptances and amendments (hereinafter collectively referred to as Notices) required or permitted hereunder shall be in writing and delivered to the party at the address set forth below (or such other address as the party may provide in writing) either: (1) in person; (2) by an overnight delivery service, prepaid; (3) by facsimile transmission (FAX) (provided that an original of the notice shall be promptly sent thereafter if so requested by the party receiving the same); (4) by email whereupon a "read receipt" confirms receipt by the addressee; or (5) by the United States Postal Service, postage prepaid, registered or certified return receipt requested. Notwithstanding the above, notice by FAX or email shall be deemed to have been given as of the date and time it is transmitted if the sending unit produces a written confirmation of successful transmittal stating the date, time and FAX number or email address to which notice was sent. Notice delivered by overnight delivery services or United States Postal Service shall be declared to have been given three (3) days after the date and time it is deposited with such carrier service, properly addressed and postage prepaid.

EXECUTED as of the date first above written in one or several counterparts, each of which shall be deemed an original, but all constituting only one Agreement. RECEIPT OF A COPY OF THIS AGREEMENT IS HEREBY ACKNOWLEDGED BY OWNER.

OWNER:

BROKER:

By _____

By _____

Printed Name: _____

Printed Name _____

Its _____

Its _____

By _____

Printed Name: _____

Its _____

Address: _____

Address: _____

Phone _____

Phone _____

Facsimile _____

Facsimile _____

Email _____

Email _____

*Initials _____

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*Blanks for initials are provided for the convenience of the parties only and failure to complete all or any of the initial blanks in this document in no way affects the validity or enforceability hereof following execution by all parties of the appropriate signature block.

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