

## Commercial Purchase and Sale Agreement

This form is provided as a courtesy to the parties only. It is not required to be used in this transaction and may not fit the needs, goals and purposes of the parties. The Mississippi Association of REALTORS® makes no statement or warranty as to this form, its contents or use, and the parties, by their use of this form, acknowledge said facts and agree that neither the Mississippi Association of REALTORS® nor any member thereof shall be liable to any party or person for its contents or use. If any party to this transaction does not fully understand it, or has any question, the party should seek advice from a competent legal professional before signing.

THIS AGREEMENT is made and entered into and effective as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (“Effective Date”) by and between the undersigned SELLER, its successors and/or assigns (except as limited herein)(the "Seller"), and the undersigned BUYER, its successors and/or assigns (except as limited herein)(the "Buyer").

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

SELLER: \_\_\_\_\_

BUYER: \_\_\_\_\_

(**Select if applicable**) The **offer** presented by Buyer through delivery of this Agreement to Seller shall EXPIRE without notice if this Agreement is not executed and an executed original thereof delivered to Buyer or Buyer’s agent before \_\_\_\_\_ o’clock AM PM central time on [Date]\_\_\_\_\_.

In consideration of the mutual covenants and promises herein set forth, the parties agree as follows:

2. **Purchase and Sale.** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller that certain property located at \_\_\_\_\_

in [City]\_\_\_\_\_, in \_\_\_\_\_ County, Mississippi, as more particularly described in an exhibit attached to this Agreement (if any), together with the following (“the Property”):

(a) all easements, privileges, rights-of-way and other appurtenances benefitting the Property, if any; and

(b) all contract rights and general intangible rights pertaining to the ownership, development or use of the Property, if any; and

(c) all licenses, permits and franchises issued by any governmental authority to or in favor of Seller and pertaining to the ownership, development or use of the Property, if any, to the extent same are legally assignable by Seller; and

(d) all contract rights and general intangible rights pertaining to the ownership, development

\*Initials \_\_\_\_\_

or use of the Property, if any.

(e)  (**Mark If Applicable**) such mineral rights as Seller possesses.

3. **Purchase Price. (Select One):**

**Flat Price.** The Purchase Price to be paid by Buyer to Seller for the Property is \$\_\_\_\_\_.

**Unit Price.** The Purchase Price to be paid by Buyer to Seller for the Property is \$\_\_\_\_\_ (the "Purchase Price"), based upon the Property containing \_\_\_\_\_ square feet or \_\_\_\_\_ acres, at the price of \$\_\_\_\_\_ per square foot or \$\_\_\_\_\_ per acre, the exact purchase price to be adjusted so that it amounts to the number of square feet or acres of land sold and purchased.

The Purchase Price is to be paid as follows (**Select One**):

The Purchase Price shall be paid to Seller in full in cash at time of Closing, subject to prorations and adjustments as hereinafter provided, to be paid by wire transfer of certified federal funds, certified check or cashier's check payable to the order of Seller.

The Purchase Price shall be paid to Seller in the form of a pre-closing deposit, as set forth in Section 4 below, with the balance, less any adjustments provided for herein, to be paid in full by wire transfer of certified federal funds, certified check or cashier's check payable to the order of Seller at Closing as set forth herein.

4. **Deposit.** To secure the performance by Buyer of its obligations under this Agreement, Buyer shall deliver an earnest money deposit in the amount of \$\_\_\_\_\_ payable to Broker [or \_\_\_\_\_] ("Escrow Agent") in wire transfer of certified federal funds, certified check or cashier's check payable to the order of Escrow Agent upon execution of this Agreement.

5. **Title.** Seller asserts that it is vested with good, marketable and insurable fee simple title to the Property, free and clear of all liens and encumbrances except taxes for the current tax year and subsequent years, any exceptions appearing in the public land records of the county(ies) in which the Property lies, applicable zoning ordinances and other existing laws or regulations, prior mineral reservations and any other matters set forth in Exhibit \_\_\_\_\_ attached hereto, if any (collectively, "the Permitted Exceptions"). Seller shall provide, at Closing, a certificate of title prepared by an attorney upon whose certificate title insurance may be obtained from a title insurance company qualified to do and doing business in the State of Mississippi, together with a (**Select One**)  **General Warranty Deed**  **Special Warranty Deed**  **Quit Claim Deed** conveying the Property to Buyer, subject only to the Permitted Exceptions. Seller shall, prior to or at Closing, satisfy all outstanding mortgages, deeds of trust and special liens affecting the Property which are not specifically assumed by Buyer under this Agreement.

6. *Parties' Representations and Warranties.*

**Seller's Representations and Warranties to Buyer.** For the purpose of inducing Buyer to enter into this Agreement and to consummate the sale and purchase of the Property as provided by this Agreement, Seller represents and warrants to Buyer the following as of the effective date hereof:

(a) **Organizational Status.** [If Owner is not an individual] Seller 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 Seller enforceable in accordance with its terms; Seller has full power and authority to enter into and perform the terms and conditions of this Agreement; Seller 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 Seller 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 Seller's organizational documents or any Agreement or agreement to which Seller is a party or by which Seller 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 Seller, or arising out of the actions of Seller, other than the commission payable by Seller 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 Seller; 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.** Seller 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 Seller'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 Seller'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 Seller and requesting the performance of any work or alteration in respect to the Property which has not been complied with.

(i) **Leases.** Seller shall provide to Buyer, 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 Seller.

(j) **Contracts or Agreements.** Seller shall provide to Buyer, 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 Seller'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 Seller 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 Closing or be binding upon 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 Buyer.

(m) **No Assessments.** To the best knowledge of Seller, 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 Seller, threatened actions, lawsuits or proceedings against Seller by any organization, person, individual or governmental agency with respect to the Property that, if determined adversely to Seller, would materially adversely affect Seller'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 Seller know of any basis for such action. There are no outstanding accounts payable relating to the Property that would be binding on Buyer. Seller also has no knowledge of any currently pending application for changes in the zoning applicable

to the Property or any portion thereof except as Seller has disclosed to Buyer as of the Effective Date. Seller 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 Seller's knowledge, no such proceedings are threatened.

(o) **Bankruptcy.** Seller 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 Seller or any of its respective properties (including the Property) been appointed or a petition filed by or against Seller 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 Seller.

(p) **Restrictive Covenants.** To the best of Seller'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 Seller 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 Seller'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. As of the Effective Date, Seller has not received any notice or demand from any governmental or regulatory agency or authority requiring Seller to remove any hazardous substances or contaminants or toxic materials from the Property.

(r) **Condemnation.** Seller 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 Seller'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 Seller'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 Seller 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 Seller that information furnished to Buyer may be made available to other parties unless the information is expressly denoted by Seller to Buyer as confidential.

**[CHECK IF APPLICABLE – Strike and initial any items that do not apply]**

The heating, ventilation, air-conditioning, electrical, plumbing, water, storm drainage and sanitary sewer systems at or servicing the Property are, to the best of Seller’s knowledge, in good condition and working order and Seller is not aware of any material defects or deficiencies therein as of the Effective Date.

**[CHECK IF APPLICABLE]**

The Property, with all improvements and appurtenances thereunto belonging, is sold in an “AS IS, WHERE IS” condition, without warranties, either express or implied, as to its/their condition, functionability or suitability for any purpose. Buyer, prior to entry into this Agreement, has satisfied itself as to the condition of improvements, and expressly acknowledges waiver by Seller of any and all warranties, express or implied, relating to the same.

**Buyer’s Representations and Warranties to Seller.** For the purpose of inducing Seller to enter into this Agreement and to consummate the sale and purchase of the Property as provided by this Agreement, Buyer represents and warrants to Seller the following as of the Effective Date hereof:

(a) **Organizational Status.** [If Buyer is not an individual] Buyer 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 Buyer enforceable in accordance with its terms; Buyer has full power and authority to enter into and perform the terms and conditions of this Agreement; Buyer 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 Buyer 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 Buyer’s organizational documents or any Agreement or agreement to which Buyer is a party or by which Buyer is otherwise bound.

(d) **No Pending Matters.** There are no pending or, to the knowledge of Buyer, threatened actions, lawsuits or proceedings against Buyer by any organization, person, individual or governmental agency that, if determined adversely to Buyer, would materially adversely affect Buyer’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 Buyer know of any basis for such action.

(e) **Brokers.** There are no real estate or brokerage compensation payable in connection with the transactions contemplated by this Agreement to any party claiming through Buyer, or arising out of the actions of Buyer, other than the compensation payable by Seller to Broker(s) as referenced herein.

(f) **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 Buyer 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 Buyer that information furnished to Seller may be made available to other parties unless the information is expressly denoted by Buyer to Seller as confidential.

(g) **Accuracy.** The representations set forth in this section are true and correct as of the date of this Agreement and shall survive the Closing.

7. **Conditions Precedent.** Buyer's obligation to close this transaction shall be subject to satisfaction in all material respects of each and all of the following condition(s) precedent on or before the Closing Date except where a different deadline is stated (**Select those which apply**):

**Financing.** Buyer's obligation to consummate the Closing shall be conditioned upon receipt by Buyer, within \_\_\_\_\_ days after the effective date of this Agreement, of a commitment by a third-party lender to make a loan to Buyer on terms suitable to Buyer ("Purchase Money Loan"). Within \_\_\_\_\_ days after the effective date of this Agreement, Buyer shall apply for a Purchase Money Loan, and shall thereafter diligently pursue obtaining a commitment for such Purchase Money Loan. If Buyer applies for and diligently pursues a commitment for the Purchase Money Loan, as provided by this section, but does not receive such a commitment within \_\_\_\_\_ days after the effective date of this Agreement (the "Financing Deadline"), Buyer, in its sole discretion, may elect either to waive such condition and proceed to Closing or to terminate this Agreement by giving Seller notice thereof (as provided for herein) within \_\_\_\_\_ days after the Financing Deadline. If Buyer does not give Seller such notice within the time period specified herein, then Buyer shall be deemed to have waived Buyer's right to terminate this Agreement and shall proceed to Closing. If Buyer elects to terminate this Agreement as provided by this Section, Escrow Agent shall promptly thereafter return the deposit to Buyer and this Agreement shall thereupon terminate and be of no further force or effect except as otherwise expressly provided by this Agreement.

**Appraisal.** Seller and Buyer, as they may agree, and at (**Select One**)  Buyer's /  Seller's sole cost and expense, shall obtain, within \_\_\_\_\_ days after the Effective Date of this Agreement, an appraisal of the Property. Buyer's obligation to consummate the Closing shall be conditioned upon the appraised value of the Property being equal to or in excess of the Purchase Price.

Title Insurance. Seller and Buyer, as they may agree, and at **(Select One)** Buyer's / Seller's sole cost and expense, shall obtain, within \_\_\_\_\_ days after the Effective Date of this Agreement, a commitment for title insurance for the Property issued by a national title insurance company (the "Title Commitment") committing to insure that (i) fee simple title is vested in Seller; (ii) title is good and merchantable of record; (iii) title is free of all liens, encumbrances, easements, restrictions, claims of title, leases, adverse possession, condemnation and other matters except the Permitted Exceptions; and (iv) the Property has access to a public right of way, either directly or by means of a recorded easement. Provision of said title commitment shall supersede Seller's obligation to provide an attorney's certificate of title.

Survey. Seller and Buyer, as they may agree, and at **(Select One)** Buyer's / Seller's sole cost and expense, shall obtain, within \_\_\_\_\_ days after the Effective Date of this Agreement, a survey of the Property by a licensed surveyor or engineer selected and engaged by the party responsible for payment (the "Survey") showing and certifying to Buyer and Seller to the effect that (i) the boundary lines of the Property close; (ii) no improvements to the Property encroach upon adjoining property and no improvements to adjoining property encroach upon the Property; (iii) the boundaries of the Property, as shown on such survey, are consistent with its boundaries as indicated by the description in Exhibit A to this Agreement; and (iv) the Property has access to a public right of way, either directly or by means of a recorded easement. **(Mark if applicable)**  Such survey shall also show all easements of record or otherwise known by Seller to exist affecting the Property.

Environmental Assessment. Seller and Buyer, as they may agree, and at **(Select One)** Buyer's / Seller's sole cost and expense, shall obtain, within \_\_\_\_\_ days after the Effective Date of this Agreement, a Phase I environmental site assessment report of the Property by a consultant selected and engaged by the party responsible for payment which does not reveal, in Buyer's reasonable discretion, any unsatisfactory environmental conditions at the Property, including but not limited to the presence of any Hazardous Materials.

Suitability for Proposed Use and Necessary Approvals. All applicable zoning and land use laws, ordinances and regulations will permit, as a matter of right, the use of the Property for \_\_\_\_\_ (the "Proposed Use"). Any disclosure of Buyer's Proposed Use to Seller shall be confidential, and Seller, its agents, servants and assigns covenant to maintain the confidentiality thereof. Such covenant of confidentiality shall survive Closing or the termination of this Agreement. There shall not be in effect any moratoria or similar impediments to receipt of any development approvals or issuance of permits by any governmental authority exercising authority over the Property or the Proposed Use and Buyer shall have received either (i) all permits necessary to develop the Property for the Proposed Use; or (ii) written assurances from the applicable governmental authorities exercising authority over the Property or the Proposed Use that all such permits will be issued in the ordinary course.



Improvement Cost Cap. The projected cost to Buyer of all on-site and off-site improvements required to develop the Property according to Buyer's development plan by any governmental authority exercising authority over the Property or its use including, but not limited to, storm water management, road widening, curb cuts, traffic lights and signs, shall not exceed \$ \_\_\_\_\_ in the aggregate.

Off-site Improvements. Seller shall have completed those off-site improvements necessary to develop the Property in accordance with Buyer's development plan set forth in the attached Exhibit \_\_\_\_\_.

Utilities. Public water, storm water management and sewer service, electric service, gas service, television cable service and telephone service [**strike and initial any which do not apply**] shall be available at the boundaries of the Property *or* Buyer shall have received written assurances from the applicable authorities exercising authority over such utilities that all such services will be available at the boundaries of the Property within a reasonable time after Closing.

Subdivision. Seller shall be able to convey to Buyer title to the Property as provided by this Agreement without violating any applicable law governing the subdivision of land and the Property shall constitute one or more separately subdivided lots or parcels according to applicable law.

Due Diligence. Buyer shall have a period of \_\_\_\_\_ days (the "Inspection Period") following the Effective Date of this Agreement to make, secure or review such physical, zoning, geotechnical, wetlands/environmental, civil engineering, governmental enactments, availability of utilities (including water, sewer, gas, electricity and/or storm water drainage), marketing and other investigations, tests and studies including, but not limited to, soil tests and borings, percolation tests, appraisal, survey, engineering, leases, zoning, title, subdivision, availability of insurance and financial statements, to determine if Buyer desires to purchase the Property. During the Review Period (i) Seller shall make available to Buyer all existing reports, statements, test results, studies and other items and documents in Seller's possession or control with respect to such matters; and (ii) Buyer and its contractors, employees, and agents shall have the right, subject to the rights of tenants under leases, if any, to enter upon the Property and make tests, studies and investigations while thereon, with reasonable advance notice to Seller and, if required by Seller, accompanied by a representative of Seller, for the purpose of inspecting and testing the Property. Buyer, in the exercise of such right of entry, shall use all reasonable efforts not to damage the Property or to interfere unreasonably with Seller's operation thereof or Seller's tenants. If Buyer's environmental site assessment of the Property during the Review Period includes the performance of any subsurface investigation, Seller acknowledges and agrees that, as between Buyer and Seller, Seller is the owner of such soil and water produced and Seller shall be solely responsible for the removal and disposal of soil and water produced in connection with such subsurface investigation. Buyer shall use all customary and reasonable techniques and practices to minimize the volume of soil and water that may be extracted during such subsurface investigation.

Buyer shall indemnify and hold Seller harmless for and from all costs, claims, damages or liability of any kind resulting from all acts or omissions of Buyer, its contractors, employees or agents arising out of or relating to the exercise of the right of entry set forth in this Section. The provisions of this Section shall survive the expiration or termination of this Agreement or Closing.

Before the end of the Inspection Period, in the event Buyer, in Buyer's sole discretion, determines that the Property is not suitable for Buyer's intended use, then Buyer shall have the option of *either* (i) waiving the condition and all conditions precedent and closing "As Is" without reduction in the Purchase Price, *or* (ii) canceling this Agreement by written notice to Seller delivered as other notices under this Agreement before the expiration of the Inspection Period stating that Buyer is canceling this transaction pursuant to this section and setting forth specifically and in detail Buyer's good faith grounds for canceling, in which event Escrow Agent shall return all deposits to Buyer, whereupon both parties shall be released from all further obligations under this Agreement. Notwithstanding the foregoing, as a condition of the return to Buyer of any deposits, Buyer shall promptly deliver to Seller, at no cost to Seller, (i) all originals or copies of documents relating to investigations, tests, studies and other materials obtained by Buyer from Seller with respect to the Property and (ii) those documents evidencing studies or assessments whose results formed the basis for Buyer's decision to exercise its rights under this Section, together with all other due diligence documents and materials provided to Buyer by Seller. Buyer shall not retain copies of any documents provided to it by Seller during due diligence except those required by law.

In the event that Buyer does not exercise its right to cancel this Agreement under this section as set forth in the preceding paragraph, then Seller shall be irrevocably entitled to retain Buyer's deposits and the same shall become non-refundable, except in the event of Seller default or as may be otherwise set forth herein.

The parties may, by written agreement, provide for extensions of the Inspection Period and, to the extent any deadline as extended conflicts with the Closing deadline set forth in Section 11, such extensions shall control.

See additional condition(s) precedent on attached Exhibit \_\_\_\_\_, the same being incorporated herein by reference.

8. ***Default (Select One).*** *If no box checked, Remedies at Law shall govern.*

Remedies at Law. In the event of a default by either party under this Agreement, the party not in breach shall have the right to receive from Escrow Agent those deposits or sums paid under Section 4 of this agreement, in addition to such other remedies as it may have under applicable law including, but not limited to, specific performance.

Limitation of Remedies and Liquidated Damages.

(a) **Default by Buyer.** In the event of the failure or refusal of the Buyer to close this transaction, without fault on Seller's part and without failure of title, Seller, subject to Buyer's right to cure as set forth in this paragraph, shall be entitled to retain all deposits posted by Buyer and any other sums paid by Buyer hereunder including, but not limited to, any improvements made to the Property under the terms hereof, as agreed and liquidated damages for said breach in addition to other liquidated damages provided for by this agreement. Upon the occurrence of any Buyer default that remains uncured for \_\_\_\_\_ calendar days after Seller gives Buyer written notice thereof delivered as other notices under this Agreement, and upon receiving notice from Seller of Buyer's uncured default, Escrow Agent shall disburse the deposit to Seller as liquidated damages, and upon such disbursement this Agreement shall terminate and be of no further force or effect except as otherwise expressly provided herein. In such event, Seller and Buyer agree that it would be impractical and extremely difficult to estimate the damages that Seller may suffer. Therefore, Seller and Buyer agree that the reasonable estimate of the total net detriment that Seller would suffer in the event of Buyer's Default, and Seller's sole remedy (whether at law or in equity), shall be the right to receive and retain the full amount of the deposit(s), and in such event Buyer hereby expressly authorizes Escrow Agent to deliver same to Seller. Payment to Seller of liquidated damages is not intended as a forfeiture or penalty within the meaning of applicable law and is intended to settle all issues and questions about the amount of damages suffered by Seller in the event of Buyer's Default.

**(Check if applicable)**  In addition to said deposit(s), Buyer shall pay to Seller the sum of \$ \_\_\_\_\_, all of which shall serve as agreed and liquidated damages for said breach.

(b) **Default by Seller.** In the event of a default by Seller under this Agreement, Buyer, as its sole and exclusive remedy hereunder, shall have the right to receive the return of those deposits or sums paid under Section 4 of this Agreement as agreed and liquidated damages for said breach. In such event, Seller and Buyer agree that it would be impractical and extremely difficult to estimate the damages that Buyer may suffer. Therefore, Seller and Buyer agree that the reasonable estimate of the total net detriment that Buyer would suffer in the event of Seller's Default, and Buyer's sole remedy (whether at law or in equity), shall be the right to receive the return said deposit(s). Payment to Buyer of liquidated damages is not intended as a forfeiture or penalty within the meaning of applicable law and is intended to settle all issues and questions about the amount of damages suffered by Buyer in the event of Seller's Default.

**(Check if applicable)**  In addition to said deposit(s), Seller shall pay to Buyer the sum of \$ \_\_\_\_\_, all of which shall serve as agreed and liquidated damages for said breach.

9. **Pro-rations.** Taxes and all other pro-ratable items shall be prorated as of the date of Closing. In the event the taxes for the year of Closing are unknown, the tax pro-ration will be based upon the taxes for the prior year, unless the parties otherwise agree.

10. **Closing Costs and Expenses.** At Closing, Buyer shall pay the cost of recording the deed of conveyance and any premiums relating to title insurance required by it. Each party shall bear the recording costs of any other instruments received or required by that party, and Seller shall pay the recording costs on documents necessary to clear title at Closing. The parties shall pay

their respective attorney fees. All taxes, rents, utility and other assessments shall be prorated between the parties as of the date of Closing, unless the parties otherwise agree.

[**Check If Applicable**]  The parties have made further provision for payment of particular Closing Costs and Expenses by the attached Exhibit \_\_\_\_\_, the same being incorporated herein by reference.

11. **Closing.** The Closing of this transaction shall be held on a future date agreeable to the parties that is not later than \_\_\_\_\_. The Closing shall occur at the offices of Broker or at such other place as the parties may agree, or in such other manner including, but not limited to, use of a "soft closing," as may be agreed by the parties. At Closing, in addition to the documents transferring title to the real Property as set forth hereinabove, Seller shall execute and deliver: (i) an assignment, within the deed of conveyance or by separate instrument, of all rights appurtenant to the Property, if any, as provided in Section 2 above; (ii) an appropriate mechanic's lien affidavit; (iii) an affidavit of exclusive possession; (iv) an affidavit pursuant to Internal Revenue Code Section 1445(b)(2) with respect to Seller's status as a non-foreign person; and the following (**Check All That Apply**):

Architectural Plans. An assignment of Seller's rights, if any, to any architectural drawings and site plans for the Property and blue-lined copies of such drawings and plans (to the extent in Seller's possession).

Assignment of Contracts. Duly executed and acknowledged Assignment of Contracts assigning and conveying to Buyer the Seller's interest in, to and under the assignable Contracts and containing an indemnity by Seller in favor of Buyer for Claims related to periods prior to the Closing and (if such contracts are assumed by Buyer) containing an indemnity by Buyer in favor of Seller related to the period after the Closing, together with original executed counterparts of contracts affecting or relating to the Property or any transferred interest, to the extent Seller or its agents have such original executed counterparts in their possession as of the Closing date.

Assignment of Leases. Duly executed, acknowledged and recordable Assignment of Leases assigning and conveying to the Buyer the Landlord's interest in, to and under any existing leases and containing an indemnity by Seller in favor of Buyer for claims by tenants arising prior to the Closing, and an indemnity by Buyer in favor of Seller for claims by tenants arising after the Closing, together with original executed counterparts of leases affecting or relating to the Property or any transferred interest, to the extent Seller or its agents have such original executed counterparts in their possession as of the Closing date.

Notice to Tenants. A letter executed by the Seller in a form approved by the Buyer and addressed to all tenants under existing leases, notifying such tenants of the change in ownership of the Property and directing that payment of all rent and other sums due from such tenants from and after Closing be made to Buyer or such other party as Buyer may direct (it shall be the responsibility of Seller to deliver such letters to the tenants.)

Rent Roll. A complete and accurate rent roll for the Property updated through the date of Closing and certified to be true and correct by Seller at Closing.

Estoppel Certificates. Estoppel certificates from all existing commercial tenants, concessionaires and licensees upon the Property, if any, in form and content acceptable to Buyer and dated no earlier than 30 days prior to Closing (but excluding individual tenant leases).

Assignment of Licenses. An Assignment of any and all municipal, county, state or federal permits or licenses, as and if existing and if transferable, held or controlled by the Seller, relating to the Property, together with all original permits or licenses assigned.

Assignment of Name Rights. An Assignment of Seller's rights with respect to the name " \_\_\_\_\_ ".

Assignment of Security Deposits. An Assignment of all Security Deposits being held by Seller or the agents of Seller with respect to the Property to Buyer.

Bill of Sale. Duly executed and acknowledged Bill of Sale conveying to Buyer good and marketable title to the personal property (and to all improvements to the extent they could be determined to be personal property), free of all liens, security interests and encumbrances, together with all use/maintenance manuals, logs and other documents relating thereto.

Keys and Records. All of the keys to any doors or locks on the Property and original tenant files and other books and records relating to the Property in Seller's possession.

Surface Non-Disturbance Agreement. Duly executed and acknowledged Surface Non-Disturbance Agreement with respect to any oil, gas and other minerals being reserved by Seller.

Tax Documents. Tax documents as may be required of Seller in order to enable Buyer to make an appropriate 1099 or other required tax-related filing(s).

At Closing, Buyer shall receive, against cash to close, a credit for escrow deposits paid by Buyer pursuant to Section 4 hereinabove. Failure of Closing to occur by the close of business on the date stated hereinabove shall, in the absence of a written extension signed by Seller and Buyer prior to such deadline *or* automatic extension pursuant to the terms of this Agreement, constitute a breach of this Agreement by the defaulting party.

Possession of the Property and all improvements shall be delivered at Closing unless otherwise agreed upon by the Parties.

12. **Compensation.** (**Select One**)  Seller  Buyer of Property sold under this

Agreement or through any other negotiated agreement agrees to pay compensation and/or fees as per listing agreement and any prior offer of cooperation and compensation (as to listed Property) or as per prior agreement (as to unlisted Property). If Broker collects this compensation, or any part thereof, through legal action, defaulting party agrees to pay court costs including reasonable attorney fees. The agreement(s) is/are extended through the date of this Agreement or any other agreement or negotiated contract between the parties or their successors, heirs or assigns. Any compensation or fee due hereunder shall be earned and payable upon presentation of a Buyer ready, willing and able to purchase Property at any price and terms acceptable to Seller, although Broker agrees to accept said compensation or fee at Closing as an accommodation to party paying compensation. Seller and Buyer acknowledge that Broker is a third-party beneficiary to this Agreement with respect to this Section. This provision shall survive Closing.

### 13. *Deposits.*

(a) ***Deposits to be held by Escrow Agent.*** The Escrow Agent designated hereinabove agrees to hold and disburse the deposit(s) as provided by this Section. Escrow Agent shall promptly (i) give Notice to Buyer and Seller of the receipt of the deposit; (ii) deposit the deposit into a federally insured financial institution in the State of Mississippi; and (iii) release the deposit to the party entitled to such as provided by this Agreement. Escrow Agent shall not be responsible for losses caused by the insolvency of the institution at which the deposit may be or is on account, provided Escrow Agent complies with this section.

(b) ***Release of Deposits.*** Escrow Agent shall not release or disburse any portion of the deposit to any person except as provided by (i) a settlement or closing statement executed by both Buyer and Seller for the Closing; (ii) one or more notices to Escrow Agent executed by both Buyer and Seller; (iii) the order of a court exercising jurisdiction over the parties or the deposit, or (iv) pursuant to the Default provisions of this Agreement. Escrow Agent is further authorized to rely upon and comply with such settlement or closing statements, notices, or orders without further notice to or consent by any third party and shall not be obligated to inquire into the authenticity of, or authority for, signatures to any such settlement or closing statements, notices or orders. If Escrow Agent has not received one or more of such settlement or closing statements, notices or orders providing for disposition of all portions of the deposit, and interest accrued thereon, if any, on or before Closing or thirty (30) days from the date of any default or apparent default hereunder or thirty (30) days from any apparent failure to Close, then Escrow Agent is hereby authorized to commence a suit in the nature of an interpleader in any court of competent jurisdiction and to tender the undisbursed amount of the deposit, and undisbursed interest accrued thereon, if any, into the custody of such court. In such event, the parties agree, jointly and severally, to deduction by Escrow Agent, prior to deposit of such funds into the registry of the Court, of any and all cost of such interpleader, including reasonable attorney fees, costs and fees relating to the initiation in due form of such suit by Escrow Agent, from the funds on deposit at such time as said expenses are incurred by Escrow Agent or in its behalf. Thereafter, Escrow Agent shall have no further obligations or liabilities in connection with the deposit(s).

(c) ***Escrow Agent Held Harmless/Indemnification.*** Buyer and Seller, jointly and severally, shall hold harmless and indemnify Escrow Agent from and against all claims, costs, expenses, damages and losses in connection with the performance by Escrow Agent of its obligations under

this Agreement, except any such claims, costs, expenses, damages and losses caused by the gross negligence or willful default of Escrow Agent.

(d) **Survival.** This Section shall survive the expiration or termination of this Agreement or the Closing.

14. **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:

Buyer’s street address:
Buyer’s facsimile:
Buyer’s email:
Seller’s street address:
Seller’s facsimile:
Seller’s email:
With copy to Broker(s) at [street address]:
Broker’s facsimile:
Broker’s email:

15. **Risk of Loss.** The Property shall be conveyed to Buyer in the same condition as on the Effective Date of this Agreement, ordinary wear and tear excepted, free of all tenancies or occupancies except leases previously disclosed to and approved by Buyer. In the event that any portion of the Property is taken by eminent domain prior to Closing, Buyer shall have the option of *either*: (i) canceling this Agreement and receiving a refund of the deposits and sums referenced in Section 4, whereupon both parties shall be released from all further obligations under this Agreement, *or* (ii) proceeding with Closing, in which case Buyer shall be entitled to

all condemnation awards and settlements with respect to the Property, less any attorney fees and costs expended by Seller in connection therewith. In the event of damage to the Property or improvements thereupon prior to Closing by virtue of causes beyond the parties' control, such as fire, flood, war, acts of God or other such causes, Seller shall, within three (3) calendar days or as soon thereafter as reasonably possible, notify Buyer in writing of said damage, at which time Buyer may, at its option:

(a) cancel this Agreement and be entitled to immediate return of all deposits; or

(b) waive any objection and proceed to Closing on the terms of this Agreement; or

(c) seek to reach suitable agreement with Seller as to repairs, extension of the Closing date and/or or other amendment to this Agreement as may be agreed upon by the parties. Failure of the parties to reach a suitable agreement within five (5) calendar days after election by Buyer to proceed under this option (c) shall automatically and without further notice cancel this Agreement and entitle Buyer to return of all deposits.

#### 16. *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) The agreed venue for any issue, dispute or controversy arising under this Agreement shall be the county in which the Property, or any part thereof, 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 closing 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 are incorporated in, and made a part of, this Agreement.

(g) Seller and Buyer acknowledge that neither of them have relied upon any statement, representation, omission made or documentation provided by the other party or the Broker(s), its



salesperson(s) or 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.” **Time is of the essence** as to all stated deadlines except where written extensions are agreed to by all parties.

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

17. **Entire Agreement, Successor, and Assigns.** 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. This Agreement shall be binding upon the parties hereto and their respective successors and assigns, except as limited herein..

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

The Listing Firm and its salespersons represent the Seller. The Selling Firm and its salespersons represent the Buyer.

The Listing Firm and its salespersons represent both the Seller and the Buyer as dual agents by mutual agreement and all parties have signed and understand the Dual Agency Confirmation form attached and made a part of this Agreement.

The Listing Firm, the Selling Firm and their respective salespersons represent the Seller as their Client. The Buyer is a customer.

The Selling Firm and its salespersons represent the Buyer. The Seller is a customer.

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. By their signature below, Seller and Buyer acknowledge RECEIPT of a **COPY** hereof.

Signed this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_  a.m.  p.m., and a **copy** hereof received:

BUYER _____	BUYER _____
Printed Name: _____	Printed Name: _____
Its: _____	Its: _____
Phone: _____	Phone: _____
Title Conveyed to (print clearly): _____	

The foregoing offer is **accepted** this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_  a.m.  p.m., and a **copy** hereof received:

SELLER _____	SELLER _____
Printed Name: _____	Printed Name: _____
Its: _____	Its: _____
Phone: _____	Phone: _____
A copy of this <b>acceptance</b> has been received this the ____ day of _____, _____, at _____ a.m. p.m.	

The Seller has **countered** this offer subject to the terms of the attached Counter Offer No. \_\_\_\_\_ this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_  a.m.  p.m., and a **copy** hereof received:

SELLER _____	SELLER _____
Printed Name: _____	Printed Name: _____
Its: _____	Its: _____
Phone: _____	Phone: _____

The Seller has **rejected** this offer and makes no counter offer this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_  a.m.  p.m., and a **copy** hereof received:

SELLER _____	SELLER _____
Printed Name: _____	Printed Name: _____
Its: _____	Its: _____
Phone: _____	Phone: _____
A <b>copy</b> of this <b>rejection</b> has been received ____ day of _____, _____, at _____ a.m. p.m.	
BUYER _____	BUYER _____
Printed Name: _____	Printed Name: _____
Its: _____	Its: _____
Phone: _____	Phone: _____

Selling Broker \_\_\_\_\_ Selling Broker \_\_\_\_\_

Selling Broker's Agency \_\_\_\_\_

\*Initials \_\_\_\_\_

Business Phone \_\_\_\_\_ Business Phone \_\_\_\_\_

Listing Broker \_\_\_\_\_ Listing Agent \_\_\_\_\_

Listing Broker's Agency \_\_\_\_\_

Business Phone \_\_\_\_\_ Business Phone \_\_\_\_\_

\*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.

\\se.freeliant.net\Network\Users\Robinson Biggs Ingram\Restricted Access RDF\RDF\Clients M\Mississippi Assn of Realtors\Commercial Forms Revisions\Final Versions\Commercial PSAFINAL053108.doc

\*Initials \_\_\_\_\_