

McMillin Real Estate & Appraisal, Inc.

COMMERCIAL PURCHASE AND SALE AGREEMENT

2002 Printing

1. **Purchase and Sale.** The undersigned buyer ("Buyer") agrees to buy and the undersigned seller ("Seller") agrees to sell all that tract or parcel of land, with such improvements as are located thereon, described as all that tract of land lying and being situated in the City of _____, County of _____:
- _____ and being known as having an address of _____, _____ City, Mississippi, together with all fixtures, landscaping, improvements, and appurtenances (all being hereinafter collectively referred to as the "Property," as more particularly described in Exhibit "A", or if no Exhibit "A" is attached as is recorded with the Chancery Clerk of the county in which the Property is located and is made a part of this Agreement by reference.
2. **Purchase Price.** The total purchase price for the Property shall be _____ U.S. Dollars (\$ _____) ("Purchase Price"), and subject to all prorations and adjustments shall be paid at the Closing by cash, wire transfer of immediately available funds, cashier's check or certified check.
3. **Earnest Money.** Buyer has deposited the sum of \$ _____ check cash with _____ ("Holder"). This sum ("Earnest Money") has been received by Holder and is to be applied as part of the Purchase Price at Closing. The Earnest Money shall be deposited in Holder's escrow account by the close of the next business day from the Binding Agreement Date. In the event any Earnest Money check is not honored, for any reason, by the financial institution upon which it is drawn, Holder shall promptly notify Buyer and Seller. Buyer shall have three banking days after notice to deliver good funds to Holder. In the event Buyer does not timely deliver good funds to Holder, this Agreement shall automatically terminate and Holder shall notify the parties of the same. Holder shall disburse Earnest Money only as follows: (a) at Closing; (b) upon a subsequent written agreement signed by Buyer and Seller; or (c) as set forth below in the event of a dispute regarding Earnest Money. No party shall seek damages from Holder, nor shall Holder be liable for any such damages, for any matter arising out of or related to the performance of Holder's duties hereunder.
4. **Disputes.** In the event Buyer or Seller notifies Holder of a dispute regarding the disposition of Earnest Money that Holder cannot resolve, Holder shall settle the dispute as follows: *[Select section A or B below. The section not selected is not part of this Agreement.]*
- A. Reasonable Interpretation by Holder.** Holder shall have the right to disburse all or any portion of the Earnest Money upon a reasonable interpretation of this Agreement by Holder. Prior to disbursing Earnest Money pursuant to a reasonable interpretation of this Agreement, Holder shall give all parties fifteen days notice, stating to whom the disbursement will be made. Any party may object in writing to the disbursement, provided the objection is received by Holder prior to the end of the fifteen-day notice period. All objections not raised in a timely manner shall be waived. In the event a timely objection is made, Holder shall consider the objection and shall do any or a combination of the following: (i) hold the Earnest Money for a reasonable period of time to give the parties an opportunity to resolve the dispute; (ii) disburse the Earnest Money and so notify all parties; and/or (iii) interplead the Earnest Money into a court of competent jurisdiction. Holder shall be reimbursed for and may deduct from any funds interpleaded its costs and expenses, including reasonable attorney's fees. The prevailing party in the interpleader action shall be entitled to collect from the other party the costs and expenses reimbursed to Holder, and upon payment of such funds into the court registry, Holder shall be released from all further liability in connection with the funds delivered.
- B. Mandatory Arbitration.** Both buyer and seller acknowledge, understand and agree that: (1) any controversy, claim, action or inaction arising out of, or relating to, the purchase set out herein, as against the listing company or selling company and/or their agents or representatives involved in this transaction, including any earnest money disputes, shall be resolved by arbitration administration by the American Arbitration Association in accordance with its arbitration rules; and (2) judgment of the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction; and (3) the arbitration proceeding shall be conducted within the country in which the dispute arose or such other location as agreed upon by the parties; and (4) if fault is found, the award of damages will conform to the terms and conditions of the "purchase"; and (5) this transaction involves interstate commerce such that the Federal Arbitration Act, 9 U.S.C. Section 1 et seq. (1947 as amended) shall govern the interpretation and enforcement of this arbitration agreement along with all claims between or among any parties and the company(is) involved in the transaction.

Buyer's Initials

Seller's Initials

5. **Inspection.** Prior to closing, Buyer and Buyer's agents shall have the right to enter upon the Property at Buyer's expense and at reasonable times, to inspect, survey, examine, and test the Property as Buyer may deem necessary as part of Buyer's acquisition of the Property. Buyer shall indemnify and hold Seller and all Brokers harmless from and against any and all claims, injuries, and damages to persons and/or property arising out of or related to the exercise of Buyer's rights hereunder. Buyer shall have _____ days from the Binding Agreement Date ("Due Diligence Period") to evaluate the Property, the feasibility of the transaction, the availability and cost of financing, and any other matter of concern to Buyer. During the Due Diligence Period, Buyer shall have the right to terminate this Agreement upon notice to Seller if Buyer determines based on an evaluation of the above that it is not desirable to proceed with the transaction. In such event, Holder shall promptly refund Buyer's Earnest Money in accordance with the Earnest Money Paragraph above. Within _____ days from the Binding Agreement Date, Seller shall deliver to Buyer copies of the materials concerning the Property referenced in Exhibit "B" (collectively "Due Diligence Materials"), which materials shall be promptly returned by Buyer if this Agreement does not close for any reason. If Buyer fails to timely notify Seller that it is not proceeding with the transaction, Buyer shall waive its rights to terminate this Agreement pursuant to this paragraph.

6. **Title.**

A. **Warranties of Seller.** Seller warrants that at Closing, Seller shall convey good and marketable, fee simple title to the Property to Buyer, subject only to the following exceptions ("Permitted Exceptions"):

(1) Liens for ad valorem taxes not yet due and payable;

(2) Those exceptions to which Buyer does not object or which Buyer waives in accordance with the Title Objections paragraph below. "Good and Marketable, fee simple title" with respect to the Property shall be such as is acceptable to and insurable by a title insurance company doing business in Mississippi ("Title Company"), at standard rates on an American Land Title Association Owner's Policy ("Title Policy").

B. **Title Objections.** Buyer shall have _____ days from the date of a title binder or title certificate in which to furnish Seller with a written statement of any title objections, UCC-1 or UCC-2 Financing Statements, and encroachments, and other facts affecting the marketability of the Property as revealed by a current title examination and survey. Seller shall have _____ days from the receipt of such objections (the "Title Cure Period") to cure all valid title objections. Seller shall satisfy any existing liens or monetary encumbrances identified by Buyer as title objections which may be satisfied by the payment of a sum certain prior to or at Closing. Except for Seller's obligations in the preceding sentence, if Seller fails to cure any other valid title objections of Buyer within the Title Cure Period (and fails to provide Buyer with evidence of Seller's cure satisfactory to Buyer and to the Title Company), then within five days of the expiration of the Title Cure Period, Buyer may as Buyer's sole remedies: (1) rescind the transaction contemplated hereby, in which case Buyer shall be entitled to the return of Buyer's Earnest Money; (2) waive any such objections and elect to close the transaction contemplated hereby irrespective of such title objections and without reduction of the Purchase Price; or (3) extend the Closing Date for a period of up to fifteen days to allow Seller further time to cure such valid title objections. Failure to act in a timely manner under this paragraph shall constitute a waiver of Buyer's rights hereunder. Buyer shall have the right to re-examine title prior to Closing and notify Seller at Closing of any title objections which appear of record after the date of Buyer's initial title examination and before Closing.

7. **Closing.**

A. **Closing Date.** This transaction shall be consummated ("Closing") at the office _____, on _____, _____, or at such other time and place as the parties may agree upon in writing (the "Closing Date").

B. **Possession.** Seller shall deliver possession and occupancy of the Property to Buyer at Closing, subject only to the rights of tenants in possession and the Permitted Exceptions.

8. **Seller's Obligations at Closing.** At Closing, Seller shall deliver to Buyer: (a) a Closing Statement; (b) General Warranty Deed; (c) FIRPTA Affidavit (indicating that Seller is not a "foreign person" or "foreign corporation" as that term is defined in Section 1445(f)(3) of the Internal Revenue Code of 1986); (d) a general warranty deed to the Property properly signed and executed by the Seller; and (e) all documents which Seller must execute under the terms of this Agreement to cause the Title Company to deliver to Buyer the Title Policy including, without limitation, a title affidavit from Seller to Buyer and to the Title Company in the form customarily used in Mississippi commercial real estate transactions so as to enable the Title Company to issue Buyer the Title Policy with all standard exceptions deleted and subject only to the Permitted Exceptions and evidence reasonably satisfactorily to Title Company of its due and proper authority and power to perform its obligations hereunder. In addition, Seller shall deliver to Buyer at Closing all documents/items indicated in Exhibit "C", if any (all documents to be delivered by Seller under this paragraph, including all documents/items indicated in Exhibit "C" are collectively "Seller's Closing Documents").

9. **Conditions to Closing.**

A. **Conditions in favor of Buyer.** The obligation of Buyer to consummate the transaction contemplated herein is conditioned upon the following conditions precedent as of the Closing Date:

(1) All representations and warranties of Seller made herein shall remain true and correct;

(2) Seller shall have performed all of the covenants undertaken by Seller in this Agreement to be performed by Seller at or prior to Closing;

(3) Seller shall have delivered to the Buyer properly executed originals of Seller's Closing Documents;

(4) There shall have been no material adverse change in the physical condition of the Property, except as otherwise provided for in this Agreement;

(5) The issuance at Closing of the Title Policy (or marked binder), with all standard exceptions deleted and subject only to the Permitted Exceptions.

B. Conditions in favor of Seller. The obligation of Seller to consummate the transaction contemplated herein is conditioned upon the following conditions precedent as of the Closing Date:

- (1) All representations and warranties of Buyer made herein shall remain true and correct;
- (2) Buyer shall have performed all of the covenants undertaken by Buyer in this Agreement to be performed by Buyer at or prior to Closing; and
- (3) Buyer shall have: (a) delivered to the Seller properly executed originals of the transfer tax declaration form, title policy documents, closing statement, and any other documents identified on Exhibit "C" that require Buyer's signature; and (b) paid the Purchase Price, plus or minus prorations and adjustments, to Seller.

10. Costs.

A. Seller's Costs. Seller shall pay the cost of recording any title curative document, including without limitation, satisfactions of deeds to secure debt, quitclaim deeds and financing statement terminations; all transfer taxes; all deed recording fees; the fees of Seller's counsel.

B. Buyer's Costs. Buyer shall pay the cost of Buyer's counsel and consultants; any costs in connection with Buyer's inspection of the Property and any costs associated with obtaining financing for the acquisition of the Property (including any intangibles tax, all deed recording fees and the cost of recording Buyer's loan documents).

C. Additional Costs. In addition to the costs identified above, the following costs shall be paid by the parties hereto as indicated below:

<u>Item to be Paid</u>	<u>Paid by Seller</u>	<u>Paid by Buyer</u>
Survey	<input type="checkbox"/>	<input type="checkbox"/>
Title Examination	<input type="checkbox"/>	<input type="checkbox"/>
Premium for Owner's Title Insurance Policy	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>

11. Taxes and Prorations. Real estate taxes on the Property for the calendar year in which the Closing takes place shall be prorated as of 12:01 a.m. on the Closing Date. Seller shall be responsible (even after Closing) for paying all taxes (including previous reassessments) on the Property for the time period during which Seller owned the Property. In addition, the following items shall also be prorated as of 12:01 a.m. on the Closing Date [*Select only those items that apply to this transaction; the items not selected shall not apply to this Agreement*]:

- Utilities
- Rents
- Service Contracts
- Leasing Commissions
- Tenant Improvement Costs
- Other: _____

12. Representations and Warranties.

A. Seller's Representations and Warranties. As of the Binding Agreement Date and the Closing Date, Seller makes the representations and warranties to Buyer, if any, as indicated on Exhibit "D".

B. Buyer's Representations and Warranties. As of the Binding Agreement Date and the Closing Date, Buyer represents and warrants to Seller that Buyer has the right, power and authority to enter into this Agreement and to consummate the transaction contemplated by the terms and conditions of this Agreement; and the persons executing this Agreement on behalf of Buyer have been duly and validly authorized by Buyer to execute and deliver this Agreement and shall have the right, power and authority to enter into this Agreement and bind Buyer.

13. Agency and Brokerage.

A. Agency.

- (1) In this Agreement, the term "Broker" shall mean a licensed Mississippi real estate broker or brokerage firm and where the context would indicate the broker's affiliated licensees. No Broker in this transaction shall owe any duty to Buyer or Seller greater than what is set forth in their brokerage agreements and Mississippi Law;
- (2) The Broker, if any, working with the Seller is identified on the signature page as the "Listing Broker"; and said Broker is . **OR**, is not representing the Seller;
- (3) The Broker, if any, working with the Buyer is identified on the signature page as the "Selling Broker", and said Broker is , **OR**, is not representing the Buyer; and
- (4) If Buyer and Seller are both being represented by the same Broker, a relationship of dual agency shall exist.

- (a) **Dual Agency Disclosure.** Seller and Buyer are aware that Broker is acting as a dual agent in this transaction and consent to the same. Seller and Buyer have been advised that:
- (1) In serving as a dual agent the Broker is representing two clients whose interests are or at times could be different or even adverse;
 - (2) The Broker will disclose all adverse, material facts relevant to the transaction and actually known to the dual agent to all parties in the transaction except for information made confidential by request or instructions from another client which is not otherwise required to be disclosed by law;
 - (3) The Buyer and Seller do not have to consent to dual agency; and
 - (4) The consent of the Buyer and Seller to dual agency has been given voluntarily and the parties have read and understood their brokerage engagement agreements;

(b) **Material Relationship Disclosure.** The Broker and/or affiliated licensees have no material relationship with either client except as follows: _____ . A material relationship means one actually known of a personal, familial or business nature between the Broker and affiliate licensees and a client which would impair their ability to exercise fair judgment relative to another client. Notwithstanding any provision to the contrary contained herein, Seller and Buyer each hereby direct Broker, if acting as a dual agent, to keep confidential and not reveal to the other party any information which could materially and adversely affect their negotiating position.

B. Brokerage. The Broker(s) identified herein have performed valuable brokerage services and are to be paid a commission pursuant to a separate agreement or agreements. Unless otherwise provided for herein, the Listing Broker will be paid a commission by the Seller, and the Selling Broker will receive a portion of the Listing Broker's commission pursuant to a cooperative brokerage agreement. The closing attorney is directed to pay the commission of the Broker(s) at closing out of the proceeds of the sale. If the sale proceeds are insufficient to pay the full commission, the party owing the commission will pay any shortfall at closing. If more than one Broker is involved in the transaction, the closing attorney is directed to pay each Broker their respective portion of said commission. In the event the sale is not closed because of Buyer's and/or Seller's failure or refusal to perform any of their obligations herein, the non-performing party shall immediately pay the Broker(s) the full commission the Broker(s) would have received had the sale closed, and the Selling Broker and Listing Broker may jointly or independently pursue the non-performing party for their portion of the commission. Seller and Buyer hereby represent and warrant, each to the other, that no party other than the Broker(s) identified herein are entitled, as a result of the actions of Seller or Buyer, as the case may be, to a real estate commission or other fee resulting from the execution of this Agreement or the transaction contemplated hereby. Seller and Buyer hereby agree to indemnify, defend and hold each other harmless from and against any and all costs, damages and expenses (including attorneys' fees) resulting directly or indirectly from any such claim arising out of the actions or contact with Seller or Buyer, as the case may be. Broker(s) hereby agree to execute and deliver at Closing a release and waiver of lien in a form approved by the Title Company. This paragraph shall survive the Closing.

14. **Disclaimer.** Buyer and Seller acknowledge that they have not relied upon any advice, representations or statements of Brokers and waive and shall not assert any claims against Brokers involving the same. Buyer and Seller agree that Brokers shall not be responsible to advise Buyer and Seller on any matter, including but not limited to the following: any matter which could have been revealed through a survey, title search or inspection of the Property; the condition of the Property, any portion thereof, or any item therein; building products and construction techniques; the necessity or cost of any repairs to the Property; hazardous or toxic materials; termites and other wood destroying organisms; the tax or legal consequences of this transaction; the availability of utilities; the appraised or future value of the Property; any condition(s) existing off the Property which may affect the Property; the terms, conditions and availability of financing; and the uses and zoning of the Property whether permitted or proposed. Buyer and Seller acknowledge that Brokers are not experts with respect to the above matters and that, if any of these matters or any other matters are of concern to them, they shall seek independent expert advice relative thereto. Buyer further acknowledges that in every community there are conditions which different buyers may find objectionable. Buyer shall therefore be responsible to become fully acquainted with neighborhood and other off site conditions which could affect the Property.

15. **Destruction of Property Prior to Closing.** If the Property is destroyed or substantially destroyed prior to Closing, Seller shall give Buyer prompt notice thereof, which notice shall include Seller's reasonable estimate of: (1) the cost to restore and repair the damage; (2) the amount of insurance proceeds, if any, available for the same; and (3) whether the damage will be repaired prior to Closing. Upon notice to Seller, Buyer may terminate this Agreement within seven days of receiving such notice from Seller. If Buyer does not terminate this Agreement, Buyer shall be deemed to have accepted the Property with the damage and shall receive at Closing (1) any insurance proceeds which have been paid to Seller but not yet spent to repair the damage, and (2) an assignment of all unpaid insurance proceeds on the claim.

16. **Other Provisions.**

A. Exhibits, Binding Effect, Entire Agreement, Modification and Assignment. All exhibits attached hereto are hereby incorporated herein. This Agreement shall be for the benefit of, and be binding upon, the parties hereto, their heirs, successors, legal representatives and permitted assigns. This Agreement constitutes the sole and entire agreement between the parties hereto and no modification or assignment of this Agreement shall be binding unless signed by all parties to this Agreement. No representation, promise, or inducement not included in this Agreement shall be binding upon any party hereto. Any assignee shall fulfill all the terms and conditions of this Agreement.

- B. **Survival of Agreement.** All conditions or stipulations not fulfilled at time of Closing shall survive the Closing until such time as the conditions or stipulations are fulfilled. Notwithstanding the above, the representations and warranties made in Exhibit "D" shall survive the Closing for a period of _____ days from the date of Closing.
- C. **Governing Law.** This Agreement may be signed in multiple counterparts, is intended as a contract for the purchase and sale of real property and shall be interpreted in accordance with the laws of the State of Mississippi.
- D. **Time of Essence.** Time is of the essence of this Agreement.
- E. **Terminology and Interpretation:** As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa, and (2) all pronouns shall mean and include the person, entity, firm, or corporation to which they relate. This Agreement shall not be construed more strictly against one party than against the other, it being acknowledged by the parties that each has contributed substantially to the preparation of this Agreement.
- F. **Responsibility to Cooperate:** All parties agree to timely take such actions and produce, execute, and/or deliver such information and documentation as is reasonably necessary to carry out the responsibilities and obligations of this Agreement.
- G. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all such counterparts shall constitute one agreement.
- H. **Notices.** Except as otherwise provided herein, all notices, including offers, counteroffers, acceptances, amendments and demands, 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) or (4) by the United States Postal Service, postage prepaid, registered or certified return receipt requested. Notice shall be deemed to have been given as of the date and time it is actually received. Notwithstanding the above, notice by FAX shall be deemed to have been given as of the date and time it is transmitted if the sending FAX produces a written confirmation with the date, time and telephone number to which the notice was sent. Receipt of notice by the Broker representing a party as a client shall be deemed to be notice to that party for all purposes herein.

Buyer's address: _____ Seller's address: _____

FAX #: _____ FAX #: _____

- I. **Remedies.** In the event of a breach of this Agreement, the non-breaching party may pursue all remedies available at law or in equity except where the parties have agreed to arbitrate. Notwithstanding the above, if Buyer breaches Buyer's obligations or warranties herein Seller shall have the option to request that Holder pay the Earnest Money to Seller, which if disbursed to Seller by Holder shall constitute liquidated damages in full settlement of all claims by Seller. Such liquidated damages are agreed to by the parties not to be a penalty and to be a good faith estimate of Seller's actual damages, which damages are difficult to ascertain.

- 17. **Time Limit of Offer.** This instrument shall be open for acceptance until _____ o'clock _____ .m. on the _____ day of _____.

- 18. **Exhibits and Addenda.** All exhibits and/or addenda attached hereto, listed below, or referenced herein are made a part of this Agreement. If any such exhibit or addendum conflicts with any preceding paragraph, said exhibit or addendum shall control:

- Exhibit "A" Legal Description
- Exhibit "B" Due Diligence Materials
- Exhibit "C" Addition to Seller's Closing Documents
- Exhibit "D" Seller's Warranties and Representations

19. **Special Stipulations.** The following Special Stipulations, if conflicting with any exhibit or preceding paragraph, shall control.

(Mark box if additional pages are attached.)

_____	Buyer's Signature: _____	SS/FEI#
Selling Broker	Print or Type Name: _____	
By: _____		
Broker or Broker's Affiliated Licensee		
Print or Type Name: _____	Buyer's Signature: _____	SS/FEI#
Bus. Phone: _____ FAX # _____	Print or Type Name: _____	

Listing Broker	Seller's Signature: _____	SS/FEI#
Multiple Listing # _____	Print or Type Name: _____	

Broker or Broker's Affiliated Licensee		
Bus. Phone: _____ FAX # _____	Seller's Signature: _____	SS/FEI#
	Print or Type Name: _____	

Acceptance Date

The above proposition is hereby accepted, _____ on the _____ day of _____, _____.

Binding Agreement Date

This instrument shall become a binding agreement on the date ("Binding Agreement Date") when notice of the acceptance of this Agreement has been received by offeror. The offeror shall promptly notify offeree when acceptance has been received.