

# COMMERCIAL SALE AGREEMENT

Revised March 2008 (Previous forms obsolete)

**This is a legally binding contract. Seek competent advice prior to execution.**

Effective Date of Commercial Sale Agreement: \_\_\_\_\_ (“Effective Date”)

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

whose address is \_\_\_\_\_ (“Seller”)

hereby agrees to sell and

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

whose address is \_\_\_\_\_ (“Buyer”)

hereby agrees to purchase the following described real estate, together with all improvements thereon and appurtenances thereto (“Property”) situated in the City of \_\_\_\_\_, County of \_\_\_\_\_, Alabama, on the terms stated below:

**Address:**

**and Described as Follows:**

1. **THE PURCHASE PRICE** shall be \$ \_\_\_\_\_, (“Purchase Price”) payable as follows:
- EARNEST MONEY**, (see below) \$ \_\_\_\_\_ (“Earnest Money”)
- CASH** on closing this sale \$ \_\_\_\_\_ (“Closing Payment”).

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**2. AGENCY DISCLOSURE:**

The listing company is: \_\_\_\_\_.

The selling company is: \_\_\_\_\_.

The listing company is: *(Two blocks may be checked)*  An agent of the Seller.  An agent of the Buyer.

An agent of both the Seller and Buyer and is acting as a limited consensual dual agent.

Assisting the  Buyer  Seller *(check one or both)* as a transaction broker.

The selling company is: *(Two blocks may be checked)*  An agent of the Seller.  An agent of the Buyer.

An agent of both the Seller and Buyer and is acting as a limited consensual dual agent.

Assisting the  Buyer  Seller *(check one or both)* as a transaction broker.

Buyer's Initials \_\_\_\_\_

Seller's Initials \_\_\_\_\_

**3. CONDITION OF PROPERTY:** Neither Seller nor any Agent makes any representations or warranties of any kind regarding the condition of the Property except to the extent expressly and specifically set forth herein. Except as otherwise stated in this Agreement, Buyer accepts the Property in its present "As Is", "Where Is" condition.

**4. BUYER'S INSPECTION PERIOD:**

a. Buyer shall have a period of \_\_\_\_\_ days from the Effective Date ("Inspection Period") to arrange for financing (if applicable) and to determine, either personally or through or with a representative of Buyer's choosing, any and all conditions of the Property (including without limitation the condition of all improvements thereon) material to Buyer's decision to purchase the Property. This determination shall include, without limitation, Buyer satisfying itself as to title matters, survey matters, structural matters, zoning matters, subdivision restrictions, environmental matters, existing contracts and financial matters affecting the Property, all soil, landscaping and other physical conditions of the Property, availability and sufficient quantities of all utilities, and all additional matters that Buyer believes relevant, in its sole and absolute discretion, in determining whether or not to purchase the Property.

b. If for any reason whatsoever Buyer is unable to obtain financing (if applicable) and/or determines that the Property is unsuitable for its purposes in its sole and absolute discretion, or decides for any other reason not to purchase the Property, then Buyer shall notify Seller in writing of its decision not to purchase the Property not later than the last day of the Inspection Period, at which time the Escrow Deposit shall be returned to Buyer, subject to the provisions contained in Section 5 hereof, and, except as to those matters that specifically survive termination pursuant to the terms hereof, this Agreement shall be null and void and neither party shall have any rights or obligations under this Agreement. If Buyer does not give written notice to Seller of its election to not purchase the Property prior to the expiration of the Inspection Period, then it is agreed that the Buyer shall be deemed to have obtained financing (if applicable) and shall be deemed to have approved the Property and the parties shall proceed to Closing as provided for herein, subject to the provisions of Section 7 and Section 8 herein.

c. From the Effective Date until the Closing, Seller hereby grants to Buyer and its agents access to the Property in order to conduct reasonable investigations and tests as Buyer may desire, including, without limitation, environmental site assessments and structural, mechanical, electrical and other physical investigations of the Property. Seller agrees to cooperate with Buyer to provide relevant information concerning the Property in Seller's

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possession upon written request therefore by Buyer in order to conduct such inspections and tests. Buyer shall coordinate all of its testing and investigations, and its agents' testing and investigations with Seller in order to insure the least amount of interference with Seller's operations. Buyer agrees to indemnify and hold Seller harmless against any claims for bodily injury, property damage and mechanics' liens arising out of any actions of Buyer or its agents or representatives on the Property in the course of such activities. Buyer also agrees to restore or repair any of the Property damaged or disturbed as a result of Buyer's exercise of its rights under this Agreement to as near as is reasonably possible to the condition that existed immediately prior to the exercise of such rights. Buyer's obligations to indemnify and hold Seller harmless under this paragraph shall survive Closing and any termination of this Agreement. Buyer's obligation under this subsection to restore the Property shall survive any termination of this Agreement, but shall not survive Closing.

## 5. EARNEST MONEY & BUYER'S DEFAULT:

a. Seller and Buyer hereby direct that \_\_\_\_\_ ("Escrow Agent") act as escrow agent and hold the Earnest Money in trust until this Agreement has been accepted and signed by all parties, at which time the Earnest Money will be promptly deposited into the escrow account of the Escrow Agent. During the Inspection Period Buyer may unilaterally and in its sole discretion cancel this Agreement and be refunded the Escrow Deposit. In the event that following the Inspection Period Buyer fails to carry out and perform the terms of this Agreement as a result of no fault of the Seller, the Earnest Money shall be forfeited to Seller as liquidated damages at the option of Seller, provided Seller agrees to the cancellation of this Agreement. If this Agreement does not close and the Earnest Money is to be turned over to Seller or refunded to Buyer pursuant to this Agreement, Seller and Buyer agree to execute a written release to the Escrow Agent affirming the proper disposition of the Earnest Money. In the event both Seller and Buyer claim the Earnest Money, or either Seller or Buyer refuses or fails to execute a release, the Escrow Agent may interplead the disputed portion of the Earnest Money into a court located in the county where the Property is located, and shall be entitled to deduct or recover from the Earnest Money its court costs, reasonable attorney fees and other out-of-pocket expenses relating to the interpleader. In the event that the Earnest Money is not received and verified as good and sufficient funds within \_\_\_\_\_ days of the Effective Date, Seller shall have the right to void this Agreement upon notice to Buyer, and upon the exercise of such right, this Agreement shall be void and neither party shall have any further obligation to the other. Furthermore, when the Earnest Money is a check and the check is returned by a financial institution as unpaid, Seller shall have the right to void this Agreement upon notice to Buyer, and upon the exercise of such right, this Agreement shall be void and neither party shall have any further obligation to the other.

b. Buyer and Seller, jointly and severally, agree to indemnify, defend and hold harmless the Escrow Agent from and against any and all losses, costs (including, without limitation, reasonable attorneys' fees), damages, expenses, and claims suffered or incurred by Escrow Agent in connection with or arising from or out of the Escrow Agent serving as an escrow agent under this Agreement.

6. **CONVEYANCE:** Seller agrees to convey the Property to Buyer by \_\_\_\_\_ warranty deed, free and clear of all encumbrances except for the "Permitted Exceptions" as herein set forth. The Property is sold and is to be conveyed subject to: (i) mineral and mining rights not owned by Seller; (ii) existing leases and tenant escrow deposits that are to be transferred to Buyer, subject to any present management and or rental commission agreements thereon; (iii) other existing binding agreements provided by Seller within \_\_\_\_\_ days of the Effective Date; and (iv) other survey matters and title matters as specifically identified as "Permitted Exceptions" herein (collectively referred to as the "Permitted Exceptions").

## 7. TITLE INSURANCE:

a. Seller shall provide, at  Buyer's  Seller's (*check one*) expense within \_\_\_\_\_ days after the Effective Date a standard owner's title insurance commitment for the issuance of an owner's title insurance policy by **NAME**

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**OF TITLE COMPANY:** \_\_\_\_\_ (“Title Company”) in the amount of the Purchase Price showing fee simple title to the Property to be in Seller, together with the documents relating to exceptions to title referred to therein (“Title Commitment”). Buyer shall notify Seller of any unacceptable liens, encumbrances, restrictions, or other defects or matters (“Title Objections”) on or before the expiration of the Inspection Period. In the event that Buyer fails to notify Seller of any Title Objections within said time period, Buyer shall be deemed to have accepted such title and all matters contained therein shall be deemed to be “Permitted Exceptions”. In the event that Buyer does provide Title Objections within said time period, within five (5) days following Buyer’s delivery of the Title Objections, Seller shall elect (by written notice to Buyer) to cure or decline to correct such Title Objections. If Seller advises Buyer that Seller is unwilling or unable to correct any or all Title Objections or if Seller fails to respond, within five (5) days thereafter, Buyer may elect to terminate this Agreement by giving written notice to Seller, at which time the Earnest Money shall be returned to Buyer subject to the provisions contained in Section 5 hereof. In the event that Buyer fails to provide such notice during such time, Buyer shall be deemed to have accepted such title and such matters shall be deemed to be “Permitted Exceptions”.

b. At Closing,  Buyer  Seller (*check one*) shall pay for the owner’s title insurance policy (“Owner’s Policy”) to be issued by the Title Company pursuant to the Title Commitment which shall contain references to the Permitted Exceptions.

**8. SURVEY:** Within five (5) days of the Effective Date, Seller shall provide, at its expense, any existing surveys of the Property which the Seller has in its possession. During the Inspection Period, Buyer has the right to obtain a new survey of the Property, at its expense.

**9. PRORATIONS:** All items customarily prorated and adjusted in connection with the closing of real estate similar to the Property, including all ad valorem taxes, rents, operating expenses, insurance, and accrued interest on mortgages assumed, if any, are to be prorated between Seller and Buyer as of the Closing Date, and any advance escrow deposits held by Mortgagees shall be credited to Seller. The cost of recording the deed shall be paid by the Buyer.

**10. CLOSING & POSSESSION DATES:**

a. The consummation of the sale transaction contemplated herein is referred to as the "Closing". The sale shall be closed and the deed delivered on or before \_\_\_\_\_ except Seller shall have a reasonable length of time within which to perfect title or cure defects in the title of the Property, as provided for herein (“Closing Date”).

b. At the Closing, Seller shall deliver to Buyer:

- (i) A deed as provided for herein;
- (ii) FIRPTA statements as required herein;
- (iii) Litigation and lien affidavits executed by Seller, in such form as approved by Title Company;
- (iv) Lien waivers executed by Seller, in such form as approved by the Title Company; and
- (v) Such other documents and instruments as may be reasonably required to effectuate the Closing as herein contemplated.

c. At the Closing, Buyer shall deliver to Seller:

- (i) Currently available funds in the amount equal to the Closing Payment adjusted as provided herein, and

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(ii) Such other documents and instruments as may be reasonably required to effectuate the Closing as herein contemplated.

d. Possession of the Property shall be given to Buyer on the Closing Date.

**11. DISCLAIMER:** Seller and Buyer acknowledge that they have not relied upon advice or representations of Agent (or Agent's associated salesperson(s)) relative to (i) the legal or tax consequences of this Agreement and the sale, purchase or ownership of the Property; (ii) the structural condition of the Property, including condition of the roof and basement; (iii) construction materials; (iv) the nature and operating condition of the electrical, heating, air conditioning, plumbing, water heating systems and appliances; (v) the availability of utilities or sewer service; (vi) the character of the neighborhood; (vii) the investment or resale value of the Property including projections of income or operating expenses; (viii) compliance requirements of the Americans with Disabilities Act; (ix) the existence of any hazardous or toxic waste, substance, or material, including without limitation any asbestos or any oil or pesticides; (x) any state of facts which would be disclosed by an accurate survey of the Property; or (xi) any other matters affecting their willingness to sell or purchase the Property on the terms and price herein set forth. Seller and Buyer have sought and obtained independent advice relative thereto.

**12. SELLER WARRANTIES:** Seller warrants that unless excepted herein, Seller has not received notification from any lawful authority regarding any assessments, pending public improvements, repairs, replacements, or alterations to the Property that have not been satisfactorily made. Seller warrants that Seller is the fee owner of the Property or is authorized to execute this document for the fee owner. Seller also represents that, to the best of its knowledge, except as may otherwise be expressly disclosed herein, Seller has not released or disposed of any hazardous or toxic waste, substance or material, including without limitation any asbestos or any oil or pesticides (collectively, "Hazardous Substances"), on or about the Property; has not disposed of or arranged for the disposition of any Hazardous Substances from the Property except in compliance with all applicable federal, state or local laws; and no Hazardous Substances exist on the Property or about the Property that threaten the Property. Seller makes no warranty that the Property is suitable for any particular purpose, nor that the Property is in compliance with the requirements of the Americans with Disabilities Act. **THESE WARRANTIES SHALL SURVIVE THE DELIVERY OF THE DEED.**

**13. RISK OF LOSS:** Seller agrees to keep in force hazard insurance on the Property until this sale is closed and the deed is delivered. If the Property is destroyed or materially damaged between the Effective Date and the Closing Date, through no fault of the Buyer or its agents, and Seller is unable or unwilling to restore it to its previous condition prior to Closing, Buyer shall have the option of canceling this Agreement and receiving the Earnest Money or accepting the Property in its then condition. If Buyer elects to accept the Property in its damaged condition, any insurance proceeds otherwise payable to Seller by reason of such damage shall be applied to the balance of the purchase price or otherwise shall be payable to Buyer.

**14. HAZARDOUS SUBSTANCES:** Seller and Buyer expressly acknowledge that the Agent(s) have not made an independent investigation or determination with respect to the existence or nonexistence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances or gases in, on, or about the Property, or for the presence of underground storage tanks. Any such investigation or determination shall be the responsibility of Seller and/or Buyer and Agent(s) shall not be held responsible therefor.

**15. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA):** At the Closing, Seller and Buyer shall comply with the FIRPTA and the regulations promulgated thereunder by the IRS.

**16. SELECTION OF ATTORNEY:** The parties hereto acknowledge and agree that, if they have agreed to share the fees of a closing attorney hereunder, such sharing of fees may involve a potential conflict of interest and they may be required to execute an affidavit at Closing acknowledging their recognition and acceptance of same. Each

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of the parties acknowledges that he has a right to be represented at all times in connection with this Agreement and the Closing by an attorney of his own choosing, at his own expense.

**17. ADDITIONAL PROVISIONS:** Any additional provisions set forth on the attached exhibits, and initialed by all parties, are hereby made a part of this Agreement.

**18. FACSIMILE AND COUNTERPART SIGNATURES:** This agreement may be executed in counterparts and by either party or by both parties by telecopy or facsimile and shall be binding upon the party so executing it upon receipt by the other party of the signature.

**19. NO ADDITIONAL BROKERS:** Buyer and Sellers represent and warrant to each other that there are no real estate brokers or agents or other persons owed any commission, finder's fee, or other compensation respecting the transaction contemplated herein, except for those parties specifically referenced herein.

**20. TIME IS OF THE ESSENCE:** The Parties agree that time is of the essence of this Agreement.

**21. NOTICE:** All notices, demands and/or consents provided for in this Agreement shall be in writing and shall be deemed to have been served on the date mailed by United States registered or certified mail, return receipt requested, with postage prepaid. All such notices and communications shall be addressed to the parties hereto at the respective addresses set forth at page 1 hereof, or at such other addresses as either may specify to the other in writing.

**22. 1031 EXCHANGE:** The parties acknowledge that either of them may elect to effect the disposition of the Property pursuant to this Agreement as a like-kind exchange pursuant to Section 1031 of the United States Internal Revenue Code (an "Exchange"). The parties agree to cooperate with one another in all respects in effecting such Exchange, including, without limitation, by executing and delivering such documents as may be customarily required in such exchange transactions, provided that the parties shall not be required to incur any expense or additional obligation in connection therewith.

**23. CONFIDENTIAL INFORMATION; INSPECTIONS:** Buyer shall use reasonable efforts to treat and hold all information furnished by Seller to Buyer in the course of Buyer's inspections and investigations of the Property as confidential information by Buyer and Buyer shall return all such information to Seller at Buyer's expense in the event the transaction contemplated by this Agreement does not close for any reason whatsoever. In addition, Buyer shall use reasonable efforts to treat and hold all reports, engineering studies, analyses and other documents and information resulting from investigations by Buyer, or any of its employees, agents or representatives obtained in the course of Buyer's inspections and investigations of the Property as confidential information and copies of all such documents shall be delivered to Seller at Seller's expense in the event the transaction contemplated by this Agreement does not close for any reason whatsoever.

**24. BIRMINGHAM ASSOCIATION OF REALTORS® ("BAR") DISCLAIMER, WAIVER AND RELEASE OF CLAIMS.** This provision, without any changes, modifications, deletions or revisions, must be included in all BAR form documents that include any reference to BAR. The parties hereto hereby acknowledge and agree that: (A) THIS DOCUMENT HAS IMPORTANT CONSEQUENCES, LEGAL, FINANCIAL AND OTHERWISE, AND BAR HAS ADVISED THE PARTIES THAT THEY SHOULD EACH CONSULT WITH AN ATTORNEY AND/OR OTHER PROFESSIONAL OF THEIR CHOICE WITH RESPECT TO THE TERMS HEREOF, AND/OR THE COMPLETION, MODIFICATION AND/OR EXECUTION OF, THIS DOCUMENT; (B) form documents by their nature are designed to be of specific general application, and may not be applicable to specific facts and circumstances, may not address given party's specific conditions or requirements, and/or may not reflect the relative bargaining or negotiations of the parties, as such variables may arise on any given transaction, (C) to avoid any possible misunderstanding or confusion as to the original form of this document and any revisions,

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**COMMISSION:** THE COMMISSION PAYABLE TO THE AGENT(S) IN THIS SALE IS NOT SET BY THE BIRMINGHAM ASSOCIATION OF REALTORS®, INC., BUT IN ALL CASES IS NEGOTIABLE BETWEEN THE AGENTS(S) AND THE CLIENT.

In this Agreement  Seller  Buyer (*check one or both*) agrees to pay to \_\_\_\_\_, Agents(s) in this transaction, in CASH at Closing, a commission in the amount of \_\_\_\_\_ of the total purchase price.

\_\_\_\_\_  
Seller/Buyer

\_\_\_\_\_  
Seller/Buyer

\_\_\_\_\_  
Broker/Agent

\_\_\_\_\_  
Broker/Agent

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