

STATE OF ALABAMA

COUNTY OF _____

OPTION/PURCHASE AGREEMENT

This Option/Purchase Agreement ("Agreement") is made and entered into by and between _____, (hereinafter referred to as "Seller"), and _____, (hereinafter referred to as "Buyer").

WITNESSETH:

1. **Grant of Option.** For and in consideration of the deposit of Ten Dollars (\$10.00) (hereinafter referred to as "Option Money") with Seller, and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Seller does hereby give and grant to Buyer, its successors and assigns, the exclusive continuing option and right to buy (hereinafter referred to as "Option"), upon the terms and conditions hereinafter set out, that certain real property described as _____ and containing approximately _____ acres (hereinafter referred to as "Optioned Parcel"), together with all of Seller's right, title and interest in and to said property. An exact legal description of the Optioned Parcel will be determined based on a survey to be obtained by _____ as provided in Paragraph 8 herein.

2. **Term of Option.** The time within which the Option may be exercised shall commence on the Effective Date and, unless extended as herein provided, shall expire at midnight on the date that is _____ () months following the Effective Date (hereinafter referred to as the "Initial Term"). Notwithstanding anything contained herein to the contrary, Buyer shall have the right to extend the time during which the Option can be exercised for a period of ___ months beyond the expiration of the Initial Term. In order to exercise its right to extend the Option buyer shall notify Seller of its election to extend the Option on or before the expiration of the Initial Term and shall deposit with Seller an additional sum of _____ Dollars (\$.00), which amount so deposited by Buyer shall be deemed an addition to, and become a part of, the Option Money.

3. **Exercise of Option: Failure to Exercise.** In order to exercise its Option to acquire the Optioned Parcel, Buyer shall give notice of its exercise to Seller on or before the expiration of the Term. Upon Buyer's exercise of the Option, the Option Agreement shall become the contract between Buyer and Seller and the Option Money shall thereafter be deemed "Earnest Money". If Buyer does not exercise the Option during the Term for any reason other than (i) a default or breach of any of Seller's covenants hereunder by Seller, (ii) any defect or exceptions in Seller's title other than Permitted Exceptions not cured by Seller as herein permitted in Paragraph 7, or (iii) a failure of any condition set forth in Paragraph 6 hereof, Seller shall be entitled to retain the Option Money and all rights and obligations hereunder shall cease and terminate.

4. **Purchase Price.** If Buyer exercises the Option to acquire the Optioned Parcel, the purchase price to be paid by Buyer to Seller for the Optioned Parcel shall be the _____ Dollars (\$.00). The number of acres is to be certified to by the surveyor providing the Survey pursuant to Paragraph 8 hereof. The purchase price, less deductions for credits, deductions and pro rations as herein provided, shall be paid at Closing by cashier's check or wire transfer of federal funds on the day of Closing.

5. **Feasibility, Permits, Approvals.** Buyer is authorized to make application for, seek and obtain any and all permits, licenses, site and development plan approvals, including but not limited to, environmental permits and authorizations, zoning approvals, curb-cut approvals, and any and all other approvals or consents as Buyer may deem necessary or desirable in connection with its proposed acquisition and/or proposed development of the Optioned Parcel as a retail/commercial development. Seller agrees to cooperate fully with Buyer in Buyer's efforts and if any such applications, approvals or permits are required to be sought in Seller's name, Seller shall upon Buyer's request execute same and shall fully cooperate with Buyer in seeking same. Buyer agrees that it shall bear all costs and expenses incurred by it in filing for any applications, approvals and permits sought by Buyer hereunder. As part of the consideration for Buyer's payment of the purchase price, Seller shall assign, transfer and convey to Buyer at Closing all permits, approvals, licenses, site and development plans affecting the Optioned Parcel, which are so obtained by Buyer and which Buyer requests Seller to assign to Buyer, and shall deliver such originals to Buyer at Closing. Upon the Effective Date, Buyer, its agents, employees and all other persons authorized by it, are permitted to enter upon the Optioned Parcel to obtain and perform such tests, studies and maps as Buyer may deem necessary or advisable including, but not limited to, percolation, soils, hazardous waste, environmental and geological tests and studies. Buyer may also make such inquiries concerning the Optioned Parcel as Buyer deems necessary or advisable. Buyer agrees to indemnify and hold Seller harmless for physical damage to person or property on account of such entry by Buyer, its agents, employees or other persons authorized by it, and in the event Buyer does not acquire the Optioned Parcel, Buyer shall restore the Optioned Parcel to the extent altered by Buyer to substantially the same condition which existed prior to such alteration. Such indemnity and hold harmless (the "Indemnity") shall survive the cancellation, termination and expiration of this Agreement and any closing thereunder, all without any further action or documentation. Should this transaction not close for any reason, Buyer will deliver to Seller, at no cost to the Seller, such copies of studies, reports, maps and investigations acquired by it and related to the Optioned Parcel.

6. **Conditions to Refund of Option Money.** Seller acknowledges that Buyer has informed Seller that it intends to utilize the Optioned Parcel for _____, and that proper zoning and the availability of utilities to serve the Optioned Parcel are required in order to occupy and/or develop the Optioned Parcel for its intended use. It is understood that if Buyer is unable to obtain a certificate of occupancy and/or approval of Buyer's development plan by all applicable governmental bodies and authorities, provided Buyer has applied for and has used its best efforts to obtain said approval, then Buyer shall be entitled to terminate this Agreement upon notice to Seller and the Option Money shall be promptly refunded by Seller to Buyer and the parties hereto shall have no further liability or obligation hereunder except for

the Indemnity. Availability of utilities, etc., shall be determined by the Buyer during the Initial Term.

7. **Title Insurance.** Within thirty (30) days after delivery to Seller of the survey provided for in Paragraph 8, the Seller shall deliver to the Buyer, at the Seller's sole cost and expense, including the payment of examining attorney's fees, if any, a commitment for title insurance for an ALTA Form B Owner's Policy of Title Insurance from Mississippi Valley Title Insurance Company, dated after the Effective Date, showing good and marketable title vested in the Seller, proposing to insure the Buyer, and committing to insure the Optioned Parcel in the amount of the purchase price. If the title insurance binder reflects any exceptions or defects in title to the Optioned Parcel, except for ad valorem taxes which are a lien but are not due and payable and existing, specifically identifiable utility easements that appear of record and do not affect Buyer's proposed use of the Optioned Parcel (hereinafter referred to as "Permitted Exceptions"), then, within thirty (30) days of the receipt of the title commitment, Buyer will notify Seller and Seller shall at its expense use best efforts to satisfy and remove same to Buyer's and the Title Company's satisfaction. If Seller is unable to do same within thirty (30) days after Seller's receipt of notice from Buyer, Buyer may, at its sole option, within thirty (30) days thereafter waive said defect or exception or cancel this Agreement, in which latter event Seller agrees that Seller shall refund to Buyer the Option Money or the Earnest Money, as the case may be. Seller agrees to cause any mortgage or other monetary liens affecting the Optioned Parcel to be paid in full or otherwise released at or prior to Closing and to execute any affidavit reasonably and customarily required by the Title Company for the issuance of the owner's title policy to Buyer. Seller further agrees to use best efforts to satisfy all requirements (other than those pertaining to Buyer) which may be set forth in the title binder so that the policy to be issued can be issued without an exception thereto, except for Permitted Exceptions. As a condition precedent to Buyer's obligation to close on the Optioned Parcel in the event the Option is exercised, Buyer shall receive at Closing, or as soon thereafter as pertinent documents are placed of record, at Seller's sole cost and expense, an ALTA Form B Owner's Policy of Title Insurance issued by the Title Company issuing the Commitment, in the amount of the purchase price for the Optioned Parcel covering said Optioned Parcel, which policy shall show good and merchantable fee simple title in Buyer to the Optioned Parcel subject only to Permitted Exceptions. Exceptions for rights of parties in possession, matters of survey and any materialmen's and mechanics' liens shall be deleted at Seller's expense. The exceptions set forth on the attached Exhibit "A" shall be Permitted Exceptions.

8. **Survey.** Buyer shall, within _____ () months after the Effective Date, cause an onsite survey ("Survey") of the Optioned Parcel to be made by a registered engineer and/or land surveyor in the State of Alabama and delivered to Seller and Seller's counsel. The survey shall be certified to Seller and Buyer and shall be sufficient to permit a title insurance company to delete the standard preprinted exceptions for matters of survey. The Buyer, the surveyor and all persons authorized by either of them shall have the right to enter upon the Optioned Parcel for purposes related to the Survey and any desired engineering tests. Buyer shall require the surveyor to locate any and all easements set forth in the title binder obtained by Buyer as affecting or benefiting the Optioned Parcel and to identify same by reference to appropriate recording information. Buyer shall also require the surveyor to certify to Seller and Buyer on

the Survey the total number of square feet in the Optioned Parcel. The cost of the survey shall be borne by Buyer.

9. **Closing.** If Buyer exercises its Option, the sale with respect to the Optioned Parcel shall be closed within thirty (30) days after such exercise at the office of _____ in _____, Alabama at a time and date agreed to by the parties ("Closing"). At Closing Seller shall execute and deliver to Buyer a general warranty deed conveying to Buyer a good and merchantable, indefeasible fee simple title in and to the Optioned Parcel, subject only to easements, restrictions and reservations of record as of the Effective Date of this Agreement. The description used in said deed shall be that described in the Survey prepared in accordance with Paragraph 8 hereof. Seller shall also furnish such standard affidavits as may be reasonably required by the Title Company, together with a FIRPTA Affidavit and a mechanic's and materialmen's lien affidavit. The parties shall execute the Declaration of Restrictions in substantially the form of the Declaration of Restrictions attached hereto as Exhibit "B." The execution of this Agreement shall constitute approval of the preliminary drawings and site plan attached hereto as Exhibit "A." Seller shall pay the cost and expense of preparing the deed and the cost and expense of recording any mortgage releases or other similar releases or affidavits attributable to the status of title to the Optioned Parcel. Buyer shall pay to record the deed and Declaration of Restrictions. At Closing, Buyer shall pay to Seller the purchase price for the Optioned Parcel, subject to credits, pro rations and a deduction for the Earnest Money. Each party shall bear its own attorney's fees. Ad valorem taxes for the tax year in which closing occurs on the Optioned Parcel shall be prorated as of Closing.

10. **Signage.** Buyer shall have the right to construct at its expense at any time after the Initial Term while this Agreement is in effect a sign or signs upon the Optioned Parcel announcing or relating to Buyer's proposed development and use of the Optioned Parcel. Any sign so constructed by Buyer shall comply with any applicable zoning and governmental requirements. In the event that the Option is not exercised by Buyer or expires or this Agreement is terminated or canceled, Buyer shall, at its expense no later than the expiration of the Term or such termination or cancellation, as the case may be, cause all signage installed by Buyer to be removed from the Optioned Parcel and Buyer and its employees shall have the right of entry onto the Optioned Parcel for such purpose.

11. **Brokers.** INSERT RECAD AGENCY DISCLOSURE WHEN APPROPRIATE

Pursuant to §34-27-8(c), Code of Alabama, 1975, as amended, the following Agency Disclosure is given by the listing company and the selling company:

AGENCY DISCLOSURE:

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 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 as a transaction broker.

Seller(s) initials: _____ Buyer(s) initials: _____

12. **Assignment, Binding.** This Agreement and the contract resulting from the exercise of this Option may be assigned by either party, only upon the prior written consent of the other party which shall not be unreasonably withheld or delayed, and upon assignment, all powers, rights and privileges herein reserved and given to Buyer or the Seller shall inure to the benefit of and be held by the respective heirs, successors and assigns of the parties, and all liabilities or obligations imposed on each shall be binding upon the respective heirs, successors and assigns of the parties. No such assignment shall relive the assignor of any of its obligations hereunder.

13. **Default.** If Seller has complied with all of its obligations herein contained, and Buyer exercises its Option to purchase the Optioned Parcel and all of the conditions herein have been satisfied, but Buyer fails to consummate the purchase of the Optioned Parcel, or otherwise breaches this Agreement, then Seller shall have as its sole and exclusive remedy the right to receive the Option Money and/or Earnest Money as liquidated damages, the parties agreeing that actual damages are unascertainable and that Seller hereby agrees to waive and release the right of specific performance and any and all other rights or remedies on account of such a default or breach. Seller expressly waives lack of mutuality of remedies. If Buyer has complied with all of its obligations and exercises its option hereunder but Seller defaults, violates, or breaches its agreement to convey the Optioned Parcel to Buyer as herein provided, then in such event Buyer may declare this Option Agreement canceled and of no further force and effect and promptly receive the Option Money and/or the Earnest Money, or Buyer may sue for specific performance and Buyer shall have any other right or remedy provided by law.

Any dispute or claim in law or equity arising out of or related to this Agreement shall be decided by neutral, binding arbitration and not by court action, except as provided by the laws of the State of Alabama for judicial review of arbitration proceedings. Should either party give the other notice of intention to proceed hereunder, each party shall appoint an arbiter who together shall select a referee. The arbitration shall be conducted in Montgomery, Alabama in accordance with the rules of the American Arbitration Association unless the parties agree in writing to use different rules. The charges of each arbiter shall be borne by the party by whom he or she was appointed. The charges of the referee shall be borne equally by the parties. A decision by a majority of the arbiters and referee shall be binding on the parties and judgment may be entered thereon in accordance with the laws of the State of Alabama.

14. **Seller's Covenants.** Seller covenants and agrees that they have the full power and authority to enter into and perform the acts contemplated of Seller herein and will not, during the term hereof permit or cause any lien, mortgage or other encumbrance to be placed on or against the Optioned Parcel. Seller hereby represents and warrants to Buyer that, to the best of Seller's knowledge, the Optioned Parcel does not contain any hazardous materials, hazardous waste or hazardous substances which would impose any liability upon Buyer under any applicable laws, rules or regulations on account thereof.

IN NO EVENT SHALL SELLER OR BROKER _____ BE LIABLE FOR OR REQUIRED TO REMEDY ANY ENVIRONMENTAL CONDITION REGARDING THE OPTIONED PARCEL.

In the event of a Closing, then with respect to the property so purchased, Seller shall be solely responsible for and shall promptly pay any "roll-back" taxes which may now or hereafter be levied or assessed against the Optioned Parcel on account of the current or past assessment of the Optioned Parcel on a "current use" basis. The provisions of this Paragraph shall expressly survive the Closing of the Optioned Parcel.

15. **Notice.** Any notice permitted or required to be given hereunder, including without limitation notice of exercise of the Option, shall be made in writing sent to receiving party at the address set forth below by Certified Mail, return receipt requested, and shall be deemed given by either party to the other when the same is deposited in the United States Mail as Certified, return receipt requested with postage prepaid sufficient to deliver to its addressed destination whether or not the receiving party receives the same. The addresses of the parties are as follows:

Seller:

With copy to:

Buyer:

16. **Condemnation.** In the event that any condemnation or eminent domain proceeding affecting all or any significant part of the Optioned Parcel is initiated prior to Closing, Seller shall forthwith give notice thereof to Buyer. Buyer may within ten (10) calendar days after receipt of such notice by Buyer, terminate this Agreement by written notice to Seller. Seller shall immediately, upon receipt of a notice of termination, deliver to Buyer all Option Money, without interest, given to Seller. Alternatively, if Buyer does not elect to terminate this Agreement the transaction shall be consummated without any reduction in the purchase price for the Optioned Parcel, in which event Seller shall deposit an instrument in form and substance reasonably acceptable to Buyer and Seller for delivery to Buyer on the date of closing assigning to Buyer all of Seller's right, title and interest in the proceedings and to any deposits paid into court and awards in connection with such proceedings as to the Optioned Parcel. Prior to Closing, Seller shall not enter into any settlement of a condemnation or eminent domain action without the prior written consent of Buyer and, if such consent is given, the proceeds to be paid to Seller shall be credited against the purchase price to be paid by Buyer.

17. **Attorney's Fees.** In the event it becomes necessary for either Seller or Buyer to employ the services of any attorney to enforce any term, covenant or provision of this Agreement, each party shall bear its own attorney's fees and expenses.

18. **Entire Agreement; Severability; Construction.** This Agreement constitutes the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements between the parties with respect to the Optioned Parcel. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless made in writing and duly executed by the parties hereto. In the event any provision herein shall be deemed invalid or unenforceable, the same shall not invalidate this Agreement and the Agreement shall be construed, to the effect possible, without such provision. Each party acknowledges that it has been represented or has had the opportunity to be represented by counsel in connection with the drafting and preparation of this Agreement. No provision of this Agreement is to be interpreted for or against any party because that party, or that party's representative, drafted or participated in the drafting of such provision.

19. **Time of Essence.** Time is of the essence with respect to the performance of each and every term, condition and obligation of this Agreement.

20. **Effective Date.** The "Effective Date" of this Agreement shall be the last date of full execution by both Seller and Buyer as set forth herein below.

21. **Counterparts.** This Agreement is being executed in six (6) counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement on the date shown beneath each parties' signature.

WITNESSES:

SELLER:

_____ By: _____ (L.S.)

Its: _____

Date Executed: _____

WITNESSES:

BUYER:

_____ By: _____

Date Executed: _____