

Form 81-25

This form is used to create an agency relationship between a seller and a broker if the seller appoints the broker as the seller’s nonexclusive agent to sell the property for the price and on the terms specified in the agreement but retains the right to sell the property without using the agent, by selling it either directly or through another agent.

NON-EXCLUSIVE

Form 81-23

**This form is used to create an agency relationship between a seller and a broker if the seller appoints the broker as the seller’s sole and exclusive agent to sell the property for the price and on the terms specified in the agreement but retains the right to sell the property directly without using the agent.**

Listing Agreement

For Sale or Lease

**[Exclusive Agency]**

**Date: Month XX, 2018**

**Owner:** Hancock County Port and Harbor Commission – a political subdivision of the State of Mississippi

**Owner’s Mailing Address, Telephone, Facsimile Numbers and Email Address:**

Hancock County Port and Harbor Commission

14054 Fred & Al Key Road

Kiln, MS 39556

Telephone: 228-467-9231

jsacks@hcphc.ms

**Broker:**

**Broker’s Mailing Address, Telephone, Facsimile Numbers and Email Address:**

**Property:** See Exhibit A attached hereto.

**Commencement Date: Month XX, 2018**

**Termination Date:** By written notice from Hancock County Port and Harbor Commission or Broker

**Broker’s Fee:** Under situations as described in Section 4 below, the Broker’s fee shall be

 Six percent (6%) of the Sales Price

 Four percent (4%) of Base Lease Rentals for primary term

 and extended terms as hereinafter stated.

Agreement

In consideration of services to be performed by Broker, Owner appoints Broker as Owner’s nonexclusive agent to sell and/or lease the Property for a price and on the terms acceptable to Owner, it being understood and agreed that Owner reserves the right to sell, exchange, lease, or otherwise dispose of the Property to a buyer or lessee procured by Owner or other broker without the assistance of Broker.

1. Agreement and Term. This agreement will commence on the Commencement Date and will continue for a term that will expire at 11:59 p.m. local time on the Termination Date. However, if there is a pending contract in effect on the Termination Date between Owner and a buyer procured by Broker and that transaction has not been closed and funded, this agreement will continue in effect beyond the Termination Date solely with respect to that contract until the earlier of the closing and funding of the transaction described in the contract or the termination of the contract in a manner permitted in the contract. The term of this agreement is also subject to extension and early termination as provided in this agreement.

2. Listing Price and Terms. Owner agrees to sell the Property at a price that Owner may accept in its sole discretion. Unless otherwise agreed by Owner, the Property will be sold for cash, and Owner will not provide any financing with respect to the sale. Owner will pay the typical transaction and closing costs borne by or charged to Owners of real property in Hancock County, Mississippi.

3. Intermediary Relationship.

A. Owner authorizes Broker to show the Property to Prospects represented by Broker. If any Prospect represented by Broker wishes to purchase or lease the Property, Owner authorizes Broker to act as an intermediary between Owner and the Prospect, and to assist both Owner and the Prospect in negotiations for the sale or lease of the property. In that event, Broker’s compensation may be paid by Owner in accordance with the terms of this Agreement, and Broker may also be paid a fee by the Prospect. A real estate broker who acts as an intermediary between parties in a transaction:

 a. may not disclose to the buyer or tenant that the seller or landlord will accept a price less than the asking price unless otherwise instructed in a separate writing by the seller or landlord;

 b. may not disclose to the seller or landlord that the buyer or tenant will pay a price greater than the price submitted in a written offer to the seller or landlord unless otherwise instructed in a separate writing by the buyer or tenant;

 c. may not disclose any confidential information, or any information a party specifically instructs the real estate broker in writing not to disclose, unless otherwise instructed in a separate writing by the respective party or otherwise required to disclose such information by the Mississippi Government Code, (Title 73, Chapter 35) (Title 89, Chapter 1 and the following), or by rules or regulation of the Mississippi Real Estate Commission, or a court order, or if the information materially relates to the condition of the property;

 d. shall treat all parties to the transaction honestly; and

 e. shall comply with the Laws, Rules and Regulations governing real property conveyances in the State of Mississippi.

B. Appointments. Broker is authorized to appoint, by providing written notice to the parties, one or more licensees associated with Broker to communicate with and carry out instructions of one party, and one or more licensees associated with Broker to communicate with and carry out instructions of the other party or parties. During negotiations, an appointed licensee may provide opinions and advice to the party to whom the licensee is appointed.

4. Broker’s Fee. Broker shall be compensated by the buyer upon terms as determined by independent agreement between Broker and the prospective buyer of the listed property. In situations in which Owner considers, in its sole discretion, it to be necessary to consummate a sale or transfer of Owner’s property to a Buyer providing substantial economic development and job creation on the property, Owner may agree to pay a commission to Broker, which shall be governed by the following provisions:

Select one of the following.

a. The Broker’s Fee will be earned and payable when the sale or lease of the Property to a buyer or lessee procured by Broker, individually or in cooperation with another broker, under a contract executed by Owner is finally closed and funded, whether this occurs during the term of this agreement or after the termination of this agreement (subject to the Broker’s Fee for leased property being due in installments as provided in Section 4(c) below).

Or

Continue with the following.

b. Unless otherwise provided in this agreement, in the event a sales agreement is executed by Owner with a buyer procured by Broker, the Broker’s Fee will be determined on the basis of the sale price (the “Sale Price”) specified in the contract between Owner and the buyer. If the disposition of the Property is consummated as an exchange of the Property for other property, the Sale Price of the Property will be deemed to be the fair market value determined by appraisal unless otherwise specified by Broker and Owner in writing. If the disposition or lease of the Property is by a no-cost economic development incentive transfer or lease by Owner, no commission shall be paid by Owner to Broker, which may collect a commission from the Purchaser, or Lessee.

c. Unless otherwise provided in this agreement, in the event a lease is executed by Owner with a Lessee procured by Broker, the Broker’s Fee will be determined on the basis of the payments for lease of the property, excluding any portion of such payments for Owner constructed or financed improvements, insurance reimbursements, utilities, and park or other services (“Base Lease Rentals”). If the Lease contains one or more options to extend the Lease, Broker’s commission for each exercised option term shall be due and payable by Owner upon exercise of the option and payment of the first month’s rent due for the extended term. For initial or renewal terms lasting longer than five years, the Broker’s Fee will be paid in installments, with each installment representing the scheduled Base Lease Rentals due during the next five year period (or the remainder of the initial or renewal term in the event less than five years remains on such term), and due upon the first payment of a Base Lease Rental in such five year period (or remainder period). Renewal or extensions of leases by Owner which are not provided for in the original lease procured by Broker shall not result in a commission to Broker unless specifically approved by Owner in writing.

d. If a buyer procured by Broker with whom Owner has entered into a contract for the sale of the Property during the term of this agreement breaches that contract and Owner receives the buyer’s earnest money or a portion thereof as liquidated damages, Owner will pay Broker the lesser of one-half of the amount of the liquidated damages or the Broker’s Fee that would have been earned had the contract for sale not been breached.

e. If litigation or mediation is instituted with respect to a contract between Owner and a buyer procured by Broker for the sale of the Property that is executed during the term of this agreement, and Owner collects all or a portion of the Sale Price or damages by judgment, compromise, settlement, or otherwise, Owner will pay Broker the lesser of (i) one-half of the amount collected after deduction of attorney’s fees and other expenses of collection or (ii) the Broker’s Fee (determined after reducing the Sale Price by the amount of attorney’s fees or other expenses of collection).

f. Owner will not owe Broker the Broker’s Fee if a sale of the Property does not close or fund.

g. Owner will not owe Broker a Broker’s Fee in connection with any transaction in which the buyer or other party to the transaction was procured by Owner directly or through the services of another broker without the assistance or participation of Broker.

5. Protection Period. Subject to the conditions set forth in paragraph 4. above, if, within ninety days after the termination of this agreement (the “Protection Period”), Owner enters into a contract to sell or lease the Property to one of Broker’s Registered Buyers or Lessees (as hereinafter defined) or sells, exchanges, leases or otherwise transfers an interest in the Property to one of Broker’s Registered Buyers or Lessees, Owner will pay Broker the Broker’s Fee. For purposes of this agreement, the Broker’s Registered Buyers or Lessees will consist only of those persons whose attention has been called to the Property by Broker during the term of this agreement, or with whom Broker has negotiated the sale, exchange, lease, or other transfer of the Property during the term of this agreement, and whose names and addresses have been provided in writing by Broker to Owner within ten (10) days after the termination of this agreement. It is specifically understood and agreed, however, that the foregoing provisions regarding the Protection Period will not be applicable with respect to any sale, exchange, lease, or other transfer of the Property that occurs after the termination of this agreement while the Property is listed exclusively with another broker.

6. Broker’s Duties and Authorities. During the term of this agreement, Broker will be authorized and required to take the following actions:

a. Broker will make reasonable efforts and act diligently to sell or lease the Property in accordance with the terms of this agreement. Owner authorizes Broker and Broker’s associates, at Broker’s sole cost and expense, to (i) advertise the Property by the means and methods Broker reasonably determines to be appropriate for the Property based on then-current market practices for properties substantially similar to the Property; (ii) furnish comparative marketing and sale information about other properties to prospective buyers; (iii) disseminate information about the Property to other brokers and their associates through a multiple-listing service or such other means as Broker reasonably determines to be appropriate; (iv) enter the Property, and accompany other brokers and their associates who wish to enter the Property, at reasonable times on reasonable advance notice, and coordination with Owner to show the Property to prospective buyers or lessees, and; (v) authorize property inspectors, appraisers, and repair personnel to enter the Property at reasonable times on reasonable notice, and coordination with Owner for pertinent purposes.

b. Broker is not authorized to (i) execute any document in the name of or on behalf of Owner with respect to the Property, (ii) authorize any repairs to the Property without Owner’s prior written consent, (iii) authorize the expenditure of any funds on behalf of Owner without Owner’s prior written consent, (iv) negotiate any earnest money deposit or other instrument in connection with the Property, (v) use a “lock-box” for keys to the Property, or (vi) place any “For Sale” signs on the Property or remove other signs offering the Property for sale or lease without Owner’s prior written consent.

c. Broker will not be obligated to market the Property after Owner has entered into a binding contract unless the contract provides otherwise. If Broker is obligated to submit subsequent or backup offers, Owner will specifically provide in the contract for the sale of the Property with a buyer that Owner may continue to market the Property so that Broker may receive subsequent or backup offers, which will be submitted to Owner as received for consideration by Owner when the prior contract is terminated or renegotiated. If Owner enters into a contract to sell the Property that does not provide for the submission of backup offers, and Broker subsequently receives a subsequent or backup offer to purchase the Property, Broker will inform Owner and submit the subsequent or backup offer to Owner when the prior contract is terminated or renegotiated.

d. Broker will not be responsible in any manner for personal injury to Owner resulting from acts of third parties or loss of or damage to personal or real property due to vandalism, theft, freezing water pipes, or other causes, except the negligence or misconduct of Broker. Broker will not be responsible for the security of the Property or for inspecting the Property on any periodic basis unless otherwise agreed in writing by Owner and Broker.

7. Broker’s Representations and Covenants. Broker represents and warrants to, and covenants with, Owner as follows:

a. Broker is duly licensed as a real estate broker authorized to provide real estate brokerage services in accordance with this agreement by the Mississippi Real Estate Commission (the “Commission”) and will maintain that license in full force and effect at all times during the term of this agreement. All associates employed by Broker to assist with marketing and selling the Property, and all other brokers with whom Broker cooperates in connection with marketing and selling the Property, will be duly licensed by the Commission as real estate brokers or agents in accordance with Mississippi Law when any such services are rendered.

b. All activities by Broker and Broker’s associates hereunder will be conducted in strict compliance with the Act, the rules and regulations of the Commission, and all other provisions of applicable law, including, without limitation, all fair housing laws.

8. Owner’s Representations and Covenants. Owner represents and warrants to, and covenants with, Broker as follows:

a. Owner represents that (i) Owner has fee simple title to the Property, peaceable possession of the Property and all improvements and fixtures on the Property unless rented, and the legal capacity to convey the Property; (ii) no person or entity has any right to purchase, lease, or acquire the Property by virtue of a contract, option, right of first refusal, or other agreement; (iii) there are no delinquencies or defaults under any deed of trust, mortgage, or other encumbrance on the Property; (iv) the Property is not subject to the jurisdiction of any court whose permission or consent is required for the execution of this agreement or the sale, exchange, or other disposition of the Property; and (v) all information regarding the Property that has been provided by Owner to Broker, or that may be provided by Owner to Broker after the execution of this agreement, has been or will be, to the best of Owner’s knowledge, true, correct, and complete in all material respects.

b. Owner will cooperate fully and in good faith with Broker to facilitate the showing and marketing of the Property at Broker’s sole cost and expense and will provide Broker with copies of all leases or rental agreements pertaining to the Property, if any, and advise Broker of any tenants moving into or out of the Property.

c. Owner will furnish to a buyer of the Property (i) an owner policy of title insurance at Owner’s expense for the basic premium cost of such policy (without regard to any modifications or endorsements) in the amount of the Sale Price and dated at or after the closing of the sale of the Property; (ii) a special warranty deed conveying title to the Property subject only to liens securing payment of a debt created as part of the Sale Price, taxes for the current year, restrictive covenants and utility easements currently of record in Hancock County, Mississippi, which affect the property, and other reservations or exceptions that will not materially impair or interfere with the buyer’s anticipated use of the Property or that are otherwise acceptable to the buyer; and (iii) property tax statements showing no delinquent taxes.

d. Owner will furnish to the escrow or closing agent closing any sale or other disposition of the Property contemplated by this agreement such information regarding Owner and the transaction as the agent will require to report the transaction to the Internal Revenue Service in accordance with applicable law.

e. Owner represents that Owner is not a nonresident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person, requiring a buyer of the Property to withhold a portion of the Sale Price under section 1445 of the Internal Revenue Code of 1986, as amended. At or before the sale or other disposition of the Property, Owner will provide Broker and any buyer of the Property any affidavits and other information reasonably required to confirm the representations concerning the nonforeign status of Owner.

9. Termination. Either party is entitled to terminate this agreement before the Termination Date if the other party fails to perform its obligations under the agreement and the failure to perform is not cured to the reasonable satisfaction of the party giving written notice of such failure within thirty days after receipt of the notice. Either party is also entitled to terminate this agreement without cause upon 30 days’ notice to the other party. Except for a termination due to Broker’s failure to be licensed under the Act, any such termination will not be effective with respect to any contract for the sale, exchange, lease, or other disposition of the Property previously executed by Owner and a buyer that is then pending closing.

10. This section intentionally left blank.

11. Binding Effect. This agreement binds, benefits, and may be enforced by the successors in interest to the parties.

12. Choice of Law. This agreement will be construed under the laws of the state of Mississippi, without regard to choice-of-law rules of any jurisdiction. Forum is Circuit, Chancery or Justice Court in Hancock County, Mississippi.

13. Counterparts. This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

14. Waiver of Default. It is not a waiver of or consent to default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

15. Further Assurances. Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

16. Indemnity. Broker agrees to indemnify, defend, and hold harmless Owner from any loss, attorney’s fees, expenses or claims arising out of the performance or non-performance by Broker of its rights and obligations under this Agreement.

17. Entire Agreement.  This agreement is the entire agreement of the parties. There are no representations, agreements, warranties, or promises, and neither party is relying on any statements or representations of any agent of the other party, that are not in this agreement.

18. Legal Construction. If any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section.

19. Notices. Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

20. Recitals. Any recitals in this agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement.

21. Time. Time is of the essence. Unless otherwise specified, all references to “days” mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

Include the following if applicable.

22. Owner’s Reserved Rights. Owner reserves the right to sell, lease, and/or renew and extend leases, without a commission being due to Broker, with Owner’s current tenants and with persons and or entities who have or may in the future deal directly with Owner, or other brokers who may have a listing on the Property, without the participation of Broker.

**Hancock County Port and Harbor Commission** **ACME Real Estate**

Owner Broker

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:

Name: Name:

Title: Title:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:

**Exhibit “A”**

**Description of Property**

The land and buildings generally represented in the geographic area associated with the figures below, except for those properties already sold or leased.  Owner may cooperate with Broker on soon-to-be expiring leases so that Broker may market those properties as well.  It is expected that the Broker will maintain regular, proactive communication with Owner to determine individual parcel or building availability and to ensure that the appropriate disclosures/notices are presented for each property.