

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT made this ____ day of June, 2002 between _____ ("Seller"), and _____ or their assigns ("Buyer").

W I T N E S S E T H:

For good and valuable consideration, the receipt and sufficiency of which are acknowledged by Seller and Buyer, the parties agree:

ARTICLE ONE
DEFINITIONS

The following terms as used in this Agreement shall have the meanings ascribed to them below:

1.1 "Due Diligence Period". A _____ () day period, commencing on the date this Agreement has been fully executed by Seller and Buyer.

1.2 "Escrow Agent". BERNHARDT LAW FIRM, who shall hold the earnest money deposit hereunder pursuant to Section 3.1.

1.3 "Leases". Leases for space(s) in the Project with or without tenants.

1.4 "Lender". Any entity which finances Buyer's acquisition of the Property by making a loan to Buyer.

1.5 "Personal Property". All of Seller's right, title, and interest in and to all furniture, fixtures, furnishings, inventory, equipment, supplies, leases acceptable to Buyer, books, records, accounts, acceptable service contracts, deposits and other proprietary interests regarding the Property and the retail shopping business operated thereon and other personal property located on or used in connection with the Property; all plans, drawings, permits, governmental authorizations, contracts, documents, surveys, site plans, engineering reports, soil and environmental studies, manufacturer warranties and all other tangible and intangible personal property located on, pertaining to or arising out of the ownership or operation of the Real Property and the Project.

1.6 "Project". That certain business located on the Real Property at _____, being known as _____. The Project contains approximately _____ square feet of building(s) on the Real Property.

1.7 "Property". All of the Real Property, Contracts and the Personal Property.

1.8 "Real Property". The Real Property located in Shelby County, Tennessee and legally described on **Exhibit A**.

ARTICLE TWO
SALE OF PROPERTY

2.1 Subject to the terms and provisions herein contained, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the Property.

ARTICLE THREE
PURCHASE PRICE

3.1 Price. The purchase price to be paid for the Property is _____ (\$ _____ .00), the "Purchase Price". The Purchase Price is to be payable by payment of a \$ _____ 00 earnest money deposit to the Escrow Agent, the payment of which is acknowledged by Seller and Buyer. The balance of the Purchase Price shall be payable by bank certified check or wired funds at the time of closing. The price is subject to adjustments and prorations as provided for herein.

The Escrow Agent shall hold the Earnest Money and invest same in accordance with the written instruction of Seller and Buyer. Interest shall accrue to or for the account of Buyer unless Buyer shall default hereunder, whereupon interest shall follow the Earnest Money in accordance with this Agreement.

3.2 Non-Refundability. The Earnest Money shall not be refundable to Buyer unless (i) Buyer exercises its rights of termination relative to the Due Diligence Period as set out in Article Four, or (ii) Seller shall default under this Agreement, (iii) any precondition to Buyer's obligations to close hereunder shall not be met, (iv) Buyer terminates this Agreement for any other reason permitted hereunder, (v) Seller fails to deliver good and marketable title in accordance with this Agreement, or (vi) Seller otherwise fails to or is unable to perform under this Agreement.

ARTICLE FOUR
DUE DILIGENCE

4.1 Buyer Due Diligence Rights. Buyer and Buyer's agents, professionals and independent contractors shall have the right of access to the Real and Personal Property and to Seller's records in Memphis, Tennessee at any reasonable time during the term of this Contract to conduct tests; review financial information relative to the operation of the Project; complete surveys; review bids; review leases and contracts; examine and investigate the Property in any reasonable way for all other purposes consistent with evaluation of and potential ownership, leasing of and general operation of the Property. Buyer's right of investigation shall commence upon execution hereof by both Seller and Buyer. Seller agrees to assist Buyer in every reasonable way in Buyer's due diligence investigation.

With respect to Buyer's right to inspect the Property, Buyer agrees that (i) Seller shall receive not less than 24-hours prior notice of each inspection of spaces occupied by tenants, (ii) each inspection shall be performed during normal business hours or at such other times as Seller and Buyer shall mutually agree, and (iii) Buyer and Buyer's agents shall use all reasonable efforts to minimize any disruption of the tenants, guests, employees or occupants of the Property.

4.2 Costs. The cost and expense of all aspects of Buyer's investigations shall be borne by Buyer.

4.3 Conclusion of Due Diligence. Prior to the expiration of the Due Diligence Period, Buyer shall provide a written notice to Seller of Buyer's acceptance or rejection of the Property. Buyer may reject the Property at any time during the Due Diligence Period for any reason, at Buyer's sole discretion. If, at any time prior to the expiration of the Due Diligence Period, Buyer rejects the Property, the Earnest Money and any interest earned thereon shall be returned to Buyer and neither party shall have any further obligation or liability to the other with respect to this Agreement. If Buyer fails to give such notice timely, it shall be conclusively presumed that Buyer has rejected the Property.

ARTICLE FIVE TITLE

5.1 The Real Property shall be conveyed by general warranty deed in Tennessee form subject only to the following:

1. Real estate taxes for the year in which the closing shall occur which are not yet due and payable.
2. Zoning and/or restrictions and prohibitions imposed by governmental authorities, none of which shall prevent use of the Real Property as a retail shopping center.
3. Restrictions, reservations and easements recorded in the Public Records of Shelby County, Tennessee, approved by Buyer, none of which shall interfere with the use of the Real Property for its intended purpose or render the title unmarketable in the opinion of Buyer's attorney, and all of which shall be subject to the reasonable approval of Buyer's counsel and counsel for the Lender.

ARTICLE SIX TITLE INSURANCE

6.1 Title Commitment. Buyer shall, within thirty (30) days after execution of this Agreement obtain at Seller's expense, evidence of Seller's title to the Real Property in the form of a title search acceptable for an insurance commitment (the "Title Commitment") from the _____ Title Insurance Corporation (hereinafter sometimes referred to as the Title Insurer") through Bernhardt Law Firm. The Title Commitment is to be accompanied by legible copies of all documents referred to therein as exceptions to title and it shall contain the Title Insurer's undertaking to issue to Buyer upon recording of the deed conveying title a title insurance policy on ALTA form currently in use, in the name of Buyer or Buyer's assigns in the amount of the Purchase Price, excepting only to the matters approved by Buyer. If such title insurance commitment shall disclose any defects in title, Buyer shall so notify Seller in writing within thirty (30) days after receipt thereof. Seller shall then have thirty (30) days thereafter within which to cure or cause such defects to be cured, and the closing shall be extended accordingly if necessary. Any extensions of time given Seller to cure title defects shall extend the Due Diligence Period and the closing date by a like number of days. In the event that any such defect cannot be cured by Seller

within thirty (30) days, Buyer shall have the option of accepting title subject to such defects, and otherwise closing the transaction in accordance with the terms and conditions hereof, or of extending further time to Seller, not to exceed sixty (60) additional days, to effectuate such cure, or of rescinding this Agreement. If Buyer elects to rescind this Agreement pursuant to this Article Six, the Earnest Money shall be returned to Buyer. Seller agrees to use diligent effort, including bringing of lawsuits, to cure any title defects.

ARTICLE SEVEN SURVEY

7.1 Within thirty (30) days following execution of this Agreement, Seller shall deliver an ALTA/ACSM urban survey of the Real Property (the "Survey") to Seller's cost and expense. The survey is to be under seal of a Tennessee registered surveyor. If the survey shows any encroachment on the Real Property, or that improvements located on the Real Property in fact encroach on lands of others or violate any of the applicable setbacks or restrictive covenants, or that there is not access to the Real Property from a public road, or that there are any gaps or gores, the same shall be treated as a title defect. Any additional survey shall be at Buyers expense.

ARTICLE EIGHT REPRESENTATIONS AND WARRANTIES

8.1 Seller hereby represents and warrants that the following will be true and correct as of the closing date, and all of such representations and warranties shall survive closing:

- A. The legal description which is attached to this Agreement as **Exhibit A** describes the Real Property. The survey to be delivered by Seller to Buyer is, to the best knowledge of Seller, a true, accurate and complete representation of the Real Property and all improvements, rights-of-way and other survey matters. There are no such matters not reflected on the survey.
- B. All of the Leases, financial and operating statements delivered or to be delivered to Buyer are true, correct and complete with no misstatements and with no material omissions.
- C. There are no service contracts, leases other than tenant leases or other contracts of any kind or nature (except as may be listed on **Exhibit B** or disclosed in the Title Commitment) which will not be binding upon Buyer after the closing date, unless same have been approved by Buyer.
- D. Seller has received no notice of any violations of any portion of the Real Property from any governmental agency or authority and all permits and governmental authorizations which are appropriate or necessary for operation of the Project have been duly issued, are in full force and effect and will be assigned to Buyer at closing, if assignable.
- E. The Property is and shall be, at the time of closing, in full compliance with all applicable governmental and quasi-governmental laws, codes, rules and regulations.

- F. To the best of Seller's knowledge, there is (i) no contaminant, pollutant or toxic or hazardous waste, substance or gas in, on, under, over or affecting any part of the Real Property, and (ii) no adverse environmental condition or violation of any local, state or federal environmental law with respect to the Property or any part thereof.
- G. Seller has no knowledge of any pending or contemplated condemnation or eminent domain proceeding or of any moratorium affecting any portion of the Real Property.
- H. There are no third party claims pertaining to or affecting the Property except for rights of tenants arising under the Leases.
- I. Seller is the owner of the Personal Property free and clear of all liens, third party claims and encumbrances.
- J. All utilities including electricity, telephone, water, gas and sanitary sewage in sufficient quantity to service the Real Property and its tenants adequately is and will be available to the Real Property and will be fully hooked up and operable at the time of closing without payment by Buyer or the Real Property of any fees, and all necessary and appropriate approvals for same will have been obtained. The only fees payable by Buyer in connection with such utilities shall be normal usage fees.
- K. Seller has received no notice of any violations of any portion of the Real Property from any governmental agency or authority, and all permits and governmental authorizations which are appropriate or necessary for operation of the Real Property and the Project as they presently exist have been duly issued, are in full force and effect, and will be assigned to Buyer at closing, without additional charge to Buyer.
- L. All Leases are valid and enforceable in accordance with their terms and there will not be any material defaults thereunder at closing by Seller or any tenant. At the time of closing, no tenant will be entitled to any concession, rebate or allowance for any period after the closing date, and all leasing commissions will be paid in full by seller at or prior to closing. All space within the Real Property may legally be occupied for the purposes for which it is leased and is or will be used.

8.2 Indemnification. Seller hereby agrees to indemnify and hold Buyer free and harmless from and against all claims, costs and expenses incurred by Buyer as a result of a breach of or the falsity of any of Seller's representations or warranties and, in the event Buyer is made a party to any arbitration, mediation or litigation as a result of such breach or falsity or by any third parties referred to in Section 8.1, Seller will pay all the costs and expenses thereof including reasonable attorneys' fees. The provisions of Section 8.1 and 8.2 will survive the closing for a period of one (1) year. Purchaser also agrees to likewise indemnify the Seller as to all representations in this contract.

ARTICLE NINE CONDITIONS PRECEDENT

9.1 The following obligations of Seller are conditions precedent to Buyer's obligations under this Agreement and in the event any one or more of such conditions are not met on or before

the dates set forth, at Buyer's option, Seller shall be in default hereunder and Buyer shall have the unqualified right, in addition to all other remedies available at law, in equity or hereunder, to terminate this Agreement and obtain a refund of its earnest money deposit from Seller:

- A. The representations and warranties of Seller shall be true and correct as of the closing date and Seller shall have performed all of his obligations hereunder to be performed at or prior to the closing.
- B. Seller will have obtained and delivered to Buyer estoppel letters or forms from all tenants occupying the leasable space in the Project consistent with the requirements of Buyer or its Lender. To the extent that Buyer may waive the requirement for an estoppel letter or form because such cannot reasonably be obtained, Seller will deliver to Buyer and Lender Seller's affidavit as to such leases containing the same information that the estoppel letters or forms contain. Nothing herein contained, however, shall require Buyer to waive the requirement for a tenant estoppel letter or form, such being in the reasonable discretion of Buyer and Lender. In addition, if required by Lender, all such tenants shall execute subordination agreements subordinating their leases to the lien of Lender's mortgage in form satisfactory to Lender. Buyer will notify Seller of the name of the Lender at least 45 days prior to closing.
- C. The Improvements shall be delivered in as good a condition at closing as existed on Buyer's inspection during the Due Diligence Period, ordinary wear and tear excepted. The HVAC, plumbing, electrical and sewer shall be in good working order.
- D. There has been no material changes in the revenue, expenses and leased space between the Due Diligence Period and the closing date. Seller shall have continued to operate the Real Property as previously conducted.

ARTICLE TEN CLOSING

10.1 Place, Time, Etc. Subject to the other provisions of this Agreement, closing shall take place at the office of Bernhardt Law Firm, 1661 International Place Drive, Suite 400, Memphis, Tennessee 38120, or at such other place as the parties may mutually agree, thirty (30) days after the end of the Due Diligence Period.

10.2 Documents, etc. by Seller. At closing or prior to, Seller shall deliver the following items to Buyer:

- A. Closing Statement.
- B. Warranty Deed.
- C. Bill of Sale for the Personal Property with warranties of title.
- D. Assignment of Leases with warranty of title.
- E. Notice to tenants of sale.
- F. Seller's Affidavit.
- G. Assignment and delivery of all original permits, licenses, leases, contracts,

approvals, plans, specifications, surveys, certifications, warranties, estoppels, and authorizations referred to herein and all items of Personal Property being assigned or conveyed to Buyer.

- H. Estoppel letters or forms from tenants and parties to contracts.
- I. Tenant subordination agreements if required by Lender.
- J. Any other forms or documents necessary or desirable to complete the transactions herein contemplated.

10.3 Further Documents. Buyer and Seller each agree to execute such further documents and instruments and to deliver to each other such further materials in their possession at closing (or thereafter if forgotten at closing or if the need did not become apparent until after closing) as may be necessary or appropriate to accomplish the purpose and intent hereof.

ARTICLE ELEVEN CLOSING ADJUSTMENTS AND PRORATIONS

11.1 The following items are to be apportioned at closing in an equitable manner, as of the close of business on the day of the closing ("the Adjustment Date") so that the income and expense items with respect to the period prior to the Adjustment Date will be for Seller's account and the income and expense items with respect to the period on and after the Adjustment Date will be for Buyer's account.

- A. Rents as and when collected. If at the time of the Adjustment Date there are rents owed by tenants that have not been collected by Seller and are applicable to any period of time prior to the Adjustment Date, Seller shall deliver to Buyer a schedule of such uncollected rents, and Buyer agrees that such rents, if and when collected, shall be paid by Buyer to Seller. Buyer shall, however, bear no responsibility to collect such rents or to take any action whatsoever to do so. Seller may take those actions which he deems necessary to collect such rents in a manner which will not adversely affect the relationship of Buyer and tenant. All rents received by Buyer shall be applied first to current rents.

Payments of utility, common area and other charges from tenants shall be apportioned in an equitable manner.

- B. Real estate and personal property taxes shall be apportioned based upon the calendar year for which they are assessed. If the closing date shall occur before the tax rate or assessment is fixed, the apportionment of such taxes at the closing shall be upon the basis of the tax rate for the next preceding year applied to the latest assessed valuation; provided, however, that readjustment will be made based upon the actual tax amount, when determined. This provision shall survive the closing.
- C. Amounts paid or payable in respect of any service contracts that are assumed.
- D. Water, electricity, oil, gas, telephone, sewer and other utilities based on actual charges when final meter readings have been obtained or actual expenses determined. Seller, to the extent current readings are available, shall endeavor to

furnish readings made on or immediately prior to the Adjustment Date.

- E. Such other apportionments and adjustments as are customarily apportioned upon the transfers of property similar to the Seller's property.

11.2 Liens. All liens are to be paid by Seller at or before closing. Any termination costs for service contracts or equipment leases not assumed by Buyer shall be paid by Seller.

ARTICLE TWELVE COMMUNICATIONS

12.1 Between the date of this Agreement and the date of closing, Seller shall keep Buyer fully informed as to all matters pertaining to the Project and the Property in the same manner as if Buyer were the owner thereof. Seller's obligations under this Article shall include an obligation to deliver copies of all notices delivered by Seller to, and to Seller by, tenants, contractors, subcontractors and governmental officials. Seller shall not modify, amend or terminate any existing leases or enter into any new leases without the consent of Buyer, such consent shall not be unreasonable withheld.

ARTICLE THIRTEEN RISK OF LOSS

13.1 Damage. If the improvements are damaged by fire or other casualty prior to closing, the cost of such restoration shall be an obligation of the Seller and closing shall, at Buyer's option, proceed pursuant to the terms of this Agreement with the cost therefor being escrowed at closing, or closing shall be delayed until thirty (30) days after the restoration is complete. If restoration cannot be completed within thirty (30) days of the closing date set forth herein, Buyer may terminate this Agreement or proceed to close in which event all insurance proceeds shall be delivered to Buyer.

13.2 Taking. In the event there shall be a threatened, pending or completed exercise of the power of eminent domain or deed in lieu thereof of any portion of the Property, Buyer shall have the option to complete closing hereunder and take an assignment of the proceeds paid or to be paid therefor, or to terminate this Agreement.

13.3 Termination. Upon any termination under this Article Thirteen, Buyer shall be refunded her entire Earnest Money deposit(s) plus interest and neither party shall have any further liability to the other.

ARTICLE FOURTEEN EXPENSES

14.1 Seller's Expenses. Seller shall pay the cost of the Title Search, survey, termite inspections, broker's commissions, Seller's attorney's fees, preparation and recordation of Seller's documents, and related closing costs.

14.2 Buyer's Expenses. Buyer shall pay all transfer taxes relative to the conveyance;

the cost of recording the warranty deed, Buyer's attorney's fees and the costs of closing Buyer's loan with the Lender.

ARTICLE FIFTEEN
DEFAULT

15.1 If Buyer fails to perform this Agreement within the time specified, the Earnest Money deposit paid to date by Buyer, together with any interest that may have been earned thereon, shall be retained by or for the account of Seller as full, complete and liquidated damages in full settlement of any and all claims hereunder, whereupon all parties shall be released of all obligations under this Agreement. If Seller shall default in Seller's obligations under this Agreement or fail, neglect or refuse to perform Seller's obligations hereunder, Buyer may elect to terminate this Agreement and obtain a refund of her Earnest Money deposit together with all interest thereon and/or Buyer may avail herself of any remedy otherwise available hereunder, at law or in equity including specific performance.

ARTICLE SIXTEEN
BROKERAGE COMMISSION

16.1 Broker. Buyer and Seller represent and warrant to each other that _____ (“Broker”) is the only Broker with whom each has dealt in connection with the transaction contemplated by this Agreement. Seller agrees to pay to Broker a total commission of \$ _____ upon the closing of the transaction and full payment of the Purchase Price. Seller and Buyer each represent and warrant one to the other, that they have dealt with no other broker, finder or similar individual or entity in connection with this transaction. Seller hereby agrees to hold Buyer free and harmless from all brokerage or similar claims made by any entity claiming through or as a result of dealings with Seller. Buyer hereby agrees to hold Seller free and harmless from all brokerage or similar claims made by any entity claiming through or as a result of dealings with Buyer.

ARTICLE SEVENTEEN
SURVIVAL OF CERTAIN PROVISIONS

17.1 Wherever in this Agreement obligations of Seller or Buyer are stated to survive closing hereunder, such obligations shall survive closing and delivery of the deed. Additionally, all unperformed obligations hereunder shall, unless performance thereof is waived in writing by the other party, survive closing and delivery of the deed.

ARTICLE EIGHTEEN
NOTICES

18.1 All notices hereunder shall be written and shall be deemed given upon receipt thereof or, if receipt is refused, upon the date of refusal. Notices shall be valid if delivered by any of the following means: certified mail, return receipt requested; telecopier, with receipt confirmed; hand delivery or delivery by bonded courier, or overnight or same day delivery service.

18.2 Notices to Seller shall be sent to Seller at the following address:

With copy to:

18.3 Notices to Buyer shall be sent to Buyer at the following address:

18.4 Any party may change its address or telecopier number for notices by giving due notice of such change to the other party hereto.

ARTICLE NINETEEN
ESCROW AGENT

19.1 Duties and protections of Escrow Agent. The Escrow Agent shall perform all duties and be afforded all protections contained herein.

ARTICLE TWENTY
MISCELLANEOUS

20.1 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their personal representatives, heirs, successors and assigns.

20.2 Severability. In the event of the invalidity of any provision hereof, same shall be deemed stricken from this Agreement, which shall continue in full force and effect as if the offending provision were never a part hereof.

20.3 Pronouns. Use of pronouns or nouns in any form where they appear in this Agreement shall be read as either masculine, feminine or neuter and either singular or plural wherever the context and facts permit.

20.4 Governing Law. This Agreement and all matters arising hereunder shall be governed by and construed in accordance with Tennessee law.

20.5 Headings and Exhibits. Article, Section and paragraph headings are inserted solely for ease of reference and shall not be construed to enlarge, modify or limit the provisions

hereof. References to numbered or lettered Articles, Sections or paragraphs refer to Articles, Sections and paragraphs of this Agreement unless specified to the contrary. References to Exhibits are to the Exhibits attached hereto which are, by this reference, made a part hereof.

20.6 Time of the Essence. Either party may make time of the essence as to any particular obligation of the other party hereunder by delivering five (5) days' written notice of the event as to which time is to be of the essence on or after the date upon which such event was to occur.

20.7 Attorneys' Fees. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to reimbursement of the costs and expenses thereof from the other party, including reasonable attorneys' fees and including such costs, expenses and fees incurred on appeals of such litigation.

20.8 Construction of Agreement. The parties agree that this Agreement was prepared jointly by each of them and shall be construed on a parity as between the parties. There shall be no canon of construction for or against any party by reason of the physical preparation of this instrument.

20.9 Effect of Words. Wherever the word "including" appears in this Agreement, it shall be deemed to mean "including, without limitation" if the context permits.

20.10 No Amendment. No amendment, modification, change or alteration of this Agreement shall be valid or binding unless in writing and signed by all the parties.

20.11 No Agency. Nothing in this Agreement shall be deemed to create an agency relationship between Seller and Buyer. The relationship of the parties is strictly that of a seller and a buyer.

20.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which taken together shall constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one counterpart.

ENTERED INTO AND EXECUTED as of the date first above appearing.

BUYER:

SELLER:

By: _____

By: _____

Its: _____

Its: _____

By: _____

By: _____

Its: _____

Its: _____

**SCHEDULE OF
EXHIBITS**

A. Real Property Legal Description

B. Contracts Binding on Buyer

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

EXHIBIT B
CONTRACTS BINDING ON BUYER

TO BE PROVIDED BY SELLER SUBJECT TO BUYER APPROVAL

ADDENDUM "A"
PURCHASE PRICE

The purchase price for the property shall be:

/...