

CONTRACT OF SALE

THIS CONTRACT OF SALE ("Contract") is made and entered into as of the Effective Date (as defined herein) by and between **CITY OF HARDEEVILLE**, its successors or assigns ("Purchaser"), and, **Hardee Green Holdings, LLC**, its successors or assigns ("Seller").

WITNESSETH:

In consideration of the covenants and agreements of the respective parties herein contained, the Sellers and Purchaser, for themselves, their heirs, distributes, executors, personal representatives, administrators, legal representatives, and assigns, do hereby agree as follows:

1. DEFINITIONS

As used herein the following terms shall have the following meanings:

1.1 Closing Date – Purchaser acknowledges that Purchaser is a municipality and, as such, is required by law to enact a Resolution to acquire real Property; therefore, closing shall take place thirty (30) days after the end of the Inspection Period so long as Purchaser has enacted a Resolution authorizing the sale contemplated herein. Purchaser covenants and agrees to promptly enact said Ordinance upon execution of this Contract by Seller. If the Closing Date falls on a Saturday, Sunday, or legal holiday it shall be extended until the end of the next following business day.

1.2 Earnest Money – Funds deposited with Escrow Agent under the terms of this Contract.

1.3 Effective Date - The later of the following dates: (i) the date Seller has accepted and signed this Contract, or (ii) the date Purchaser has enacted the Authorizing Resolution and has accepted and signed this Contract, as shown on the signature pages to this Contract.

1.4 Escrow Agent –

1.6 Initial Deposit - The initial deposit in the amount of five thousand dollars (\$5,000.00) deposited with Escrow Agent pursuant to this Contract.

1.7 Second Deposit – Not Applicable

1.8 Inspection Period – Except as otherwise provided in this Contract, the period beginning on the Effective Date and sixty (60) days thereafter. If the Inspection Period ends on a Saturday, Sunday, or legal holiday it shall be extended until the end of the next following business day.

1.9 Land - The property generally identified as 11 Randall Street Hardeeville SC, Tax Map #s 029-45-10-005 consisting of approximately +/- 2.08 acres of land situate, lying and being in Jasper County, South Carolina. Purchaser and Seller acknowledge and agree that there

is no uncertainty as to the definition of Land and each hereby waives any right to claim or assert that this Contract is void for lack of certainty of the legal description of the Land

1.10 Permitted Exceptions - The Permitted Exceptions defined in Section 4.1.

1.11 Property - The Land together with all rights, privileges, hereditaments, appurtenances, and easements related to the Land, including all improvements, tangible and intangible personal property, rights, rights-of-way, roadways, roadbeds, reversions, strips, gores, and any interests in any alleys, streets, or roads abutting or adjacent to the Land,

1.12 Purchase Price - The Purchase Price shall be One Hundred and Fifty Thousand Dollars (\$150,000.00).

1.13 Survey – A survey of the property that may be required. If a survey is completed, than it shall be done in accordance with Section 8.1G and as specifically outlined in the LOI incorporated herein by reference.

2. PURCHASE AND SALE

For and in the mutual covenants and consideration recited herein, Seller agrees to sell and Purchaser agrees to buy the Property for the Purchase Price subject to the terms and conditions hereof.

3. CLOSING

3.1 The consummation of the sale and purchase of the Property pursuant to this Contract (the "Closing") shall occur on the Closing Date. Purchaser also may elect to have the Closing prior to any scheduled Closing Date upon reasonable notice to Seller in which event the date designated by Purchaser in its notice shall be the Closing Date.

3.2 The Closing shall take place thirty (30) days after the end of the Inspection Period. The Purchaser shall be responsible for selecting a Closing Agent and all fees associated due and payable to such agent. All deliveries provided for below shall be delivered in trust to the Closing Agent on or before the Closing Date if not otherwise delivered directly to the party entitled to receipt of such items. Upon Closing, the Closing Agent shall record and disburse only in accordance with the parties' escrow instructions. The items to be delivered are as follows:

A. Seller shall deliver to the Purchaser or Closing Agent (as applicable) the following:

(i) A general warranty deed conveying title in fee simple to the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments and restrictions. If the legal description derived from the Survey and Subdivision Plat, as defined in Section 8.1G below, is not substantially in accordance with the Seller's vesting deed, the legal description contained within the Subdivision Plat of the Property shall be the legal description used in the general warranty deed executed by Seller at Closing;

(ii) A closing statement, in a form reasonably acceptable to Purchaser and Seller (“Closing Statement”), executed by Seller;

(iii) All other documents reasonably necessary to effectuate the transaction.

B. At the Closing, Purchaser shall deliver to Seller or the Closing Agent, as applicable, the following:

(i) Upon confirmation that the items indicated in (A) above have been deposited in escrow with the Closing Agent or delivered to Purchaser, as applicable, and the conditions to Purchaser's obligations under this Contract having been satisfied, the Purchase Price by wire transfer via the Federal Reserve System (plus or minus the net adjustments computed hereunder), payable to the order of Seller and/or such other order as Seller shall have directed by written notice to Purchaser;

(ii) The Closing Statement executed by Purchaser; and

(iii) Appropriate evidence reasonably required by Seller and the title company to evidence Purchaser's good standing with the South Carolina Secretary of State, together with Purchaser's resolutions and entity documentation necessary to confirm Purchaser's authority to execute and deliver the closing documents contemplated hereby and purchase the Property.

C. Seller shall deliver exclusive possession of the Property to Purchaser at Closing.

3.3 The following shall be adjusted between Seller and Purchaser and shall be prorated on a per diem basis as of the calendar day preceding the Closing Date (so that Purchaser has the burden of all expenses for the calendar day of Closing):

A. Real estate taxes shall be adjusted between the Seller and Purchaser on the basis of the calendar year to which they are applicable. Additionally, if current tax bills are not immediately available, such prorations shall be made on the basis of the taxes assessed for the preceding year and shall be adjusted when taxes for the year of sale are assessed. Any payment due by the Seller or Purchaser to the other as a result of any such adjustment shall be paid by the party owing such amount within thirty (30) days after receipt of written notice of the amount of the adjustment.

B. Rentals and profits, if any.

3.4 Seller shall pay for its own closing costs and its costs to transfer of the Property, including, but not limited to, the cost for recording the deed, deed stamps, recording or other similar taxes or fees for recording based in whole or in part upon the consideration for or value of the Property. Purchaser shall pay for its own attorney's fees, due diligence expenses, costs for the title examination, title insurance premiums, escrow agent fees and any surveys obtained by Purchaser.

3.5 Seller shall be solely responsible for payment of any roll-back taxes or similar taxes assessed or billed after the Closing but effecting a recapture of any amount of tax that otherwise would have been payable for the period prior to the Closing Date had the Property been used or assessed for a different use during such period than its actual assessed use ("Roll-back Taxes"). With respect to the tax year in which the Closing occurs, if any Roll-back Taxes are assessed in a subsequent tax year effecting a recapture of any amount of tax that otherwise would have been payable for the tax year in which the Closing occurs had the Property been used or assessed for a different use during such period than its actual assessed use, then the amount of any such Roll-back Taxes attributable to the year of Closing shall be prorated between Purchaser and Seller, and Seller shall pay its pro rata share of such amount based on the number of calendar days Seller owned the Property during the tax year of Closing over the total number of calendar days in such tax year.

3.7 If applicable state law requires that any of Seller's proceeds be withheld, then same shall be withheld according to law.

4. **TITLE AND SURVEY**

4.1 Seller shall convey to Purchaser at closing good and marketable fee simple title in and to the Property free of all claims, liens and encumbrances of any kind or nature whatsoever and insurable by a title insurance company reasonably acceptable to Purchaser, at then current rates under the ALTA Owner's Policy of Title Insurance with all standard printed exceptions deleted and without exception. Seller shall undertake reasonable efforts to remove claims, liens and encumbrances (other than usual and customary tax assessments, mortgage pay-offs and like financial obligations which are to be deducted from Seller's proceeds at Closing in the usual course). If the Seller advises Purchaser of its intent to not undertake curative efforts, and Purchaser may either terminate the Contract and receive its Earnest Money in full satisfaction of any and all claims against Purchaser, or accept title to the Property as so encumbered and proceed to closing, in which case such claims, liens and encumbrances shall be deemed to be Permitted Exceptions. Furthermore, Seller shall not establish any easements, covenants, or restrictions affecting the Property without the prior written consent of the Purchaser, such consent not to be unreasonably withheld, after the Effective Date.

5. **CLOSING CONTRIBUTION BY PURCHASER:** At Closing, the Purchaser shall pay to Seller 42.4% of the total brokerage fee paid by Seller when Seller obtained the property. The Purchaser and Seller may agree upon a reasonable whole number for this reimbursement to be used at closing for the sake of clarity at closing.

6. **CONDITIONS TO PURCHASER'S OBLIGATIONS**

The obligation of Purchaser hereunder to purchase the Property from Seller is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived in whole or in part by Purchaser at or prior to the Closing):

6.1 Seller shall have performed, observed and complied with all of the covenants, agreements and conditions required by this Contract to be performed, observed and complied with by it prior to or as of the Closing

6.2 All of the representations of Seller set forth in this Contract shall be true as of the Closing in all material respects as though such representations and the statements contained in this Contract were made at and as of the Closing.

6.3 Seller shall not have made an assignment for the benefit of creditors or admitted in writing its inability to pay its debts as they mature or been adjudicated as bankrupt or filed a petition in voluntary bankruptcy or a petition or answer seeking reorganization or an arrangement with creditors under the federal bankruptcy law or any other similar law or statute of the United States or any state, and no such petition shall have been filed against it. All instruments and documents required on Seller's part to effectuate this Contract and the transactions contemplated herein shall be reasonably satisfactory to Purchaser and its attorneys.

6.4 In the event any of the above conditions are not satisfied as of the Closing Date, Purchaser shall have the right to terminate this Contract, in which event this Contract shall be null and void and of no further force or effect except with respect to those matters that expressly survive termination hereof. If Purchaser terminates the Contract after the end of the Inspection Period then the Seller shall retain the full amount of Earnest Money Initial Deposit.

7. REPRESENTATIONS AND WARRANTIES OF SELLER

7.1 Seller hereby represents and warrants to Purchaser the following:

A. Seller has full power and authority to enter into this Contract and to assume and perform all its obligations hereunder; the execution and delivery of this Contract and the performance by Seller of its obligations hereunder have been duly authorized by such action as may be required, and no further action or approval is required in order to constitute this Contract as a binding and enforceable obligation of Seller. No third party holds a right of first refusal; repurchase option; or similar option to purchase the Property. The execution and delivery of this Contract and the consummation of the transactions contemplated hereunder on the part of Seller do not and will not conflict with or result in the breach of any condition or provision of, or constitute, a lien, charge or encumbrance upon any of the property or assets of Seller by reason of the terms of any contract, mortgage, lien, lease, indenture, instrument, or judgment to which Seller is a party or which is or purports to be binding upon Seller or which affects Seller; and, no action by any federal, state, municipal or other governmental department, commission, board, bureau or instrumentality is necessary to make this Contract a valid instrument binding upon Seller in accordance with its terms.

B. Seller has received no notice that there is any action, suit or proceeding pending or threatened against or materially affecting the Property or any portion thereof or relating to or arising out of the ownership of the Property, in any court or before or by any federal, state, county or municipal department, commission, board, bureau or agency or other governmental instrumentality.

C. Seller has received no notice and to the best of Seller's knowledge there is no pending or threatened condemnation or similar proceeding or assessment affecting the Property, or any part thereof.

D. Seller has received no notice and is not aware of any default or breach under any of the covenants, conditions, restrictions, rights-of-way or easements affecting the Property or any portion thereof.

E. Seller has provided or will provide to Purchaser upon request, true, correct and complete copies of any reports in Seller's possession or control relating to the Property, together with all exhibits, addendum, amendments and modifications thereto.

F. Seller hereby confirms that it is not insolvent as of the Effective Date of this Contract.

8. **COVENANTS OF SELLER**

8.1 Seller hereby covenants to Purchaser as follows:

A. Between the Effective Date and Closing, Seller shall not enter into (or consent to) any contracts or agreements affecting the Property's maintenance, use or occupation which are not terminable prior to Closing, and only then if terminable without payment of a termination fee or penalty, and Seller shall disclose any contract(s) entered into by Seller after the date hereof to Purchaser.

B. Seller shall deliver the Property at Closing in the condition represented to by Seller in Section 7.1 hereof.

C. Upon the Effective Date and up through the Closing Date, Seller (i) will give to Purchaser, its attorneys, accountants, engineers and other representatives, during normal business hours and as often as may be reasonably requested, full access to any and all parts of the Property and to all books, records, and files in Seller's possession relating to the Property (e.g. topographical surveys, engineering studies, soil studies, boundary surveys, wetlands studies, zoning letters and information, DOT permits, title policies); (ii) will furnish to Purchaser or make available to Purchaser all information in Seller's possession concerning the Property which Purchaser, its attorneys, accountants, engineers or other representatives shall reasonably request; and (iii) Seller will provide Purchaser with Seller's most recent tax bill for the Property, copies of all surveys, environmental reports, structural reports and other studies in Seller's possession and control relating to the Property and with all other information that Seller believes would be of benefit to Purchaser in evaluating the Property.

E. Seller shall not cause an adverse change in the condition of title to the Property after the Effective Date.

F. Seller hereby covenants that the sale of the Property does not constitute a "short sale" and neither this Contract nor the sale of the Property as contemplated in this Contract requires the approval of any lien holder. The term "short sale" as used herein shall mean a sale of the Property for less than the indebtedness encumbering the Property. Seller hereby agrees to obtain within the first twenty (20) days of the Inspection Period said lien holder's binding consent to release the Land from the mortgage lien at Closing for a release amount equal to or less than the Purchase Price.

G. Seller covenants that Purchaser shall have the right to cause a survey of the Property to be prepared by a land surveyor licensed in the State of South Carolina (the "Survey"). The Survey shall, at a minimum, comply with the requirements for Class A Urban Land Surveys under The Minimum Standards Manual for the Practice of Land Surveying in the State of South Carolina.

9. **DESTRUCTION OR DAMAGE PRIOR TO THE CLOSING DATE**

9.1 Subject to the provisions of this Contract, Seller shall bear the risk of all loss, destruction or damage to the Property or any portion thereof from any and all causes whatsoever to and including the Closing Date. If after the date hereof, and prior to the Closing, all or any part of the Property is taken or threatened to be taken by eminent domain or condemnation such that such action materially impacts Purchaser's intended use of the Property or the value or utility of the Property to Purchaser (as determined in Purchaser's sole, but good faith, judgment), Purchaser may elect either (a) to terminate this Contract and obtain a refund of the Earnest Money, or (b) to consummate Closing as herein provided in which event all condemnation awards or payment shall be paid or assigned by Seller to Purchaser at Closing.

9.2 Purchaser shall not allow any mechanic's or materialmen's lien(s) to be filed against the Property related to any work performed on Purchaser's behalf involving the Property, and if such should be filed, covenants to bond off such mechanic's or materialmen's lien within thirty (30) days of such filing in accordance with South Carolina law (without prejudice to contest the actual amount owed, if any, as allowed by statute) so as to remove the lien on the Property.

10. **INSPECTION PERIOD**

10.1 During the Inspection Period, Purchaser shall be permitted to enter the Property and to inspect and evaluate the Property and to conduct studies and surveys thereon, including, but not limited to environmental investigations and soil testing. If Purchaser determines for any reason or no reason that the Property is not suitable for Purchaser's purposes, Purchaser may allow this Contract to terminate. If Purchaser desires to continue this Contract beyond the Inspection Period it shall give written notice of same to Seller within the next business day following the end of the Inspection Period. If Purchaser elects to continue this Contract beyond the Inspection Period, then all Earnest Money shall thereafter be non-refundable, and all Earnest Money shall be credited towards the Purchase Price at closing; provided, however, all Earnest Money shall remain fully refundable in the case of Seller's default or failure of the conditions precedent under Paragraph 6 or as otherwise expressly set forth in this Contract.

10.2 Notwithstanding anything to the contrary contained in this Contract, any investigation or examination of the Property (or of other materials and matters with respect to the Property) performed by Purchaser or Purchaser's agents, contractors or consultants prior to the Closing shall be performed at the sole risk, cost and expense of Purchaser, and Purchaser shall be solely responsible for the acts, omissions, faults or neglects of Purchaser and Purchaser's agents, contractors and consultants with respect to any such investigations or examinations. Further, Purchaser shall restore and repair any damage caused by Purchaser or Purchaser's agents. Seller expressly agrees that Purchaser shall not be held responsible for any marketability problems that

arise from any environmental surveys or audits should contamination be indicated by same. Purchaser shall provide Seller, at Seller's request, and at no cost to Seller, copies of all reports obtained by the Purchaser in the event Purchaser does not purchase the Property.

11. **EARNEST MONEY**

11.1 Within five (5) business days after the Effective Date, Purchaser shall deposit the Earnest Money with the Escrow Agent. The Earnest Money shall be deposited into an FDIC insured trust account and all interest earned thereon benefitting the South Carolina IOLTA fund. The Escrow Agent shall hold the Earnest Money subject to the conditions set forth on the attached Exhibit "A." At Closing, Escrow Agent shall pay the Earnest Money to Seller to be credited against the Purchase Price, provided, in the event Purchaser pays the full purchase price at Closing from its own funds, the parties shall instruct the Escrow Agent to immediately return the Earnest Money Deposit to the Purchaser after the Closing. If at any time after expiration of the Inspection Period the Purchaser decides not to purchase the property, the Seller shall be entitled to retain the Earnest Money.

12. **DEFAULT**

12.1 If the sale and purchase of the Property contemplated by this Contract is not consummated because of a default by any Seller, Purchaser as its sole remedy, may terminate this Contract and obtain a refund of the Earnest Money. Notwithstanding the above, Purchaser shall not exercise any remedy hereunder unless it has first given Seller ten (10) days' prior written notice of default and Seller has failed to cure the default within such ten (10) day period.

12.2 If the sale and purchase of the Property contemplated by this Contract is not consummated because of Purchaser's default hereunder, Seller shall have the right, as Seller's exclusive remedy, to terminate this Contract and receive the Earnest Money then on deposit from Escrow Agent, such sum being agreed upon as liquidated damages for the failure of Purchaser to perform the duties, liabilities and obligations imposed upon it by the terms and provisions of this Contract, and Seller agrees to accept and take said cash payment as total damages and as Seller's sole remedy in such event. It is agreed that Seller's damages would be difficult to ascertain and the Earnest Money then on deposit with Escrow Agent constitutes a reasonable forecast thereof and is intended not as a penalty but as full liquidated damages. Notwithstanding the above, Seller shall not exercise any remedy hereunder unless it has first given Purchaser ten (10) days' prior written notice of default and Purchaser has failed to cure the default within such ten (10) day period.

13. **REAL ESTATE COMMISSIONS**

13.1 No real estate brokers are being used as a part of this transaction.

14. **MUNICIPAL OBLIGATIONS**

14.1 Seller recognizes that the purchaser of this tract of land is a municipality and is governed by additional laws and requirements that a private owner of land is not subject to. The Purchaser agrees to pay for its own closing costs associated with the land. The Seller agrees to pay for its own closing costs associated with the land. Seller shall provide free and clear title to the City at closing.

15. **CONFIDENTIALITY**

15.1 Seller and Purchaser agree that all information and materials regarding the Property will be kept strictly confidential insofar as the law allows. Purchaser is a South Carolina Municipality subject to the South Carolina Freedom of Information Act and other public disclosure laws. Seller acknowledges that Purchaser must comply with public disclosure laws which may include but is not limited to the disclosure of this contract of sale and its terms.

16. **MISCELLANEOUS**

16.1 This Contract may be assigned by Purchaser to a partnership, corporation, limited liability company or other party, provided that Purchaser's assignee shall assume all Purchaser's liabilities, obligations and duties hereunder and Purchaser shall not be relieved of liability in the event of any such assignment.

16.2 Any notices, requests, or other communications required or permitted to be given hereunder shall be in writing and shall be either (i) delivered by hand, (ii) mailed by United States certified mail, return receipt requested, postage prepaid, (iii) sent by a reputable, national overnight delivery service (e.g., Federal Express, Airborne, etc.), or (iv) sent by facsimile and/or email (with the original being sent by one of the other permitted means or by regular United States mail) and addressed to each party (and any person designed as a "copy to") at the applicable address set forth herein below each party's signature. Any such notice, request, or other communication shall be considered given or delivered, as the case may be, on the date of hand delivery (if delivered by hand), on the third (3rd) calendar day following deposit in the United States mail (if sent by United States registered mail), on the next business day following deposit with an overnight delivery service with instructions to deliver on the next business day or on the next business day (if sent by overnight delivery service), or on the calendar day sent by facsimile (if sent by facsimile or email, provided the original is sent by one of the other permitted means as provided in this paragraph or by regular United States mail). However, the time period within which a response to any notice or request must be given, if any, shall commence to run the date of actual receipt of such notice, request, or other communication by the addressee thereof. Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice was given shall be deemed to be receipt of the notice, request, or other communication. By giving at least five (5) business days prior written notice thereof, any party hereto may, from time to time and at any time, change its mailing address hereunder. Any notice provided for hereunder may be given by a party's attorney or other representative.

16.4 This Contract shall be construed under and in accordance with the laws of the State of South Carolina.

16.5 This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

16.6 This Contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understanding or written or oral agreements between the parties respecting the within subject matter.

16.7 If legal action is necessary to enforce a right or remedy of either party, the prevailing party shall also be entitled to recover from the other party reasonable attorney's fees in connection therewith.

16.8 Time is of the essence in regard to the provisions of this Contract. Unless otherwise specifically stated, any time period set forth herein of five (5) days or less shall be construed as meaning business days and any time period of more than five (5) days shall be construed as meaning calendar days.

16.9 This Contract may be executed in any number of identical counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken together as one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Contract may be detached from any counterpart of this Contract without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Contract identical in form hereto but having attached to it one or more additional signature pages. Any signatures of this Contract delivered via facsimile shall be deemed originals signatures.

16.10 This terms and conditions of the offer to purchase contained in this Contract shall automatically expire at 5:00 pm November 11, 2022 unless agreed to by both Purchaser and Seller hereto, such agreement as to terms and conditions being made, acknowledged and confirmed by each party's respective signature below.

SIGNED, SEALED AND DELIVERED as of the date set forth below.

WITNESSES:

SELLER:

Hardee Green Holdings LLC

By: _____

Roel Harsta on behalf of Hardee Green Holdings LLC

DATE OF ACCEPTANCE AND EXECUTION: _____

ADDRESS FOR NOTICES TO PURCHASER:

Hardee Green Holdings LLC
c/o _____

Email: roel@hardeegreens.com

With a copy to:

Telephone:

Fax:

Email:

[PURCHASER'S SIGNATURE ON FOLLOWING PAGE]

SIGNED, SEALED AND DELIVERED as of the date first set forth below.

WITNESSES:

PURCHASER:

CITY OF HARDEEVILLE,
South Carolina

By: _____
Michael Czymbor,
Hardeeville City Manager

DATE OF ACCEPTANCE
AND EXECUTION: _____

ADDRESS FOR NOTICES TO SELLER:

City of Hardeeville
205 Main Street
Hardeeville, SC 29927
Attn: Michael Czymbor
Fax: (912) 231-0030
Phone: (912) 231-1001
E-mail: mczymbor@cityofhardeeville.com

With a copy to:
Prina C Maines, Esq.
pmaines@cityofhardeeville.com

[END OF SIGNATURE PAGES]

Exhibit "A"

ESCROW CONDITIONS

