

REAL PROPERTY PURCHASE OPTION AGREEMENT

1 Date: _____, 2021 (the "Effective Date")

2 This Real Property Purchase Option Agreement (this "Agreement") is made and entered
3 effective as of the Effective Date, by and between **John Cowan Harrell, Mary Mallie Harrell, JEH Realty,**
4 **LLC, Wilson Arrington Harrell, Bancorp South Bank as Trustee of the Lee Ann Harrell Duncan**
5 **Revocable Trust, Lee Ann Harrell, Sunnydale Properties, L.P.,** ("Seller"), and the **Madison County**
6 **Economic Development Authority,** ("Buyer").

7 **RECITALS:**

- 8 A. WHEREAS, Seller is the fee simple owner of approximately 3 acres of real property located in
9 Madison County, Mississippi (the "County"), as such property is more particularly described on
10 **Exhibit "A"** attached hereto and approximately depicted on the map attached hereto as **Exhibit "B"**
11 (the "Property"), which exhibits are incorporated herein by reference;
- 12 B. WHEREAS, Buyer desires to procure from Seller and Seller desires to grant to Buyer an option to
13 purchase the Property in accordance with the terms of this Agreement;
- 14 C. WHEREAS, Seller is authorized and empowered to sell, convey, or otherwise dispose of all of its
15 rights and interests in and to the Property for the purposes set out herein;
- 16 D. NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration,
17 the receipt and adequacy of which are hereby acknowledged, and subject to the terms and
18 conditions set forth herein, the parties hereto hereby agree as follows:

19 **AGREEMENT:**

- 20 1. Grant of Option. In consideration of the Option Price (as defined in Section 2 below) to be paid by
21 Buyer to Seller in accordance herewith, Seller does hereby grant to Buyer the exclusive option (the
22 "Option") and right to purchase the Property for the "Purchase Price" (as defined hereinafter) and
23 upon the terms hereinafter set forth.
- 24 2. Option Period/Option Price. The Option shall be effective for six month period commencing on the
25 Effective Date and expiring on the six month anniversary of the Effective Date (the "Option Period").
26 In addition to any other consideration as may be received by Seller during the Initial Option Period
27 on account of actions taken by Buyer hereunder, for the grant of the Option for the Option Period,
28 Buyer shall pay to Seller within five (5) days of the Effective Date the sum of **TEN THOUSAND**
29 **DOLLARS (\$10,000.00)** (the "Option Price").
- 30 3. Exercise of Option/Purchase Price. During the Option Period, and provided there is no then existing
31 event of default by Buyer hereunder, Buyer may exercise the Option and elect to purchase the
32 Property by sending written notice to Seller no less than ninety (90) days in advance of the desired

33 date of the Closing (as hereinafter defined). The “Purchase Price” per square foot will be Seven and
34 no/100 (\$7.00) Dollars per square foot based upon an accurate survey of the premises, said
35 Purchase Price to be paid by Buyer to Seller for the Property at Closing. As part of the consideration
36 herein, Seller agrees to provide approximately .54 of an acre for the construction of an access as set
37 for on Layout No. 2 , attached hereto as Exhibit “C”.

38 Should Buyer fail to exercise the Option during the Option Period and/or fail to timely pay any
39 portion of the Option Price when due, Seller may terminate the Option, and all rights of Buyer in and
40 to the Property granted hereby shall terminate and be of no further force or effect.

41 4. Inspection. Buyer and its agents and designees shall have the right to enter upon the Property at
42 any time during the Option Period and, after the exercise of the Option, prior to the Closing
43 (hereinafter defined), upon at least twenty-four (24) hours’ prior notice to Seller to, and at the sole
44 cost and expense of Buyer or a third-party (but in no event shall Seller be responsible for any such
45 costs or expenses), in order to conduct surveys, investigations, inspections and other analysis of the
46 Property, including any environmental tests or other analyses conducted in connection with a Phase
47 I and/or Phase II site assessment, such as groundwater quality testing, groundwater depth testing,
48 stormwater testing, surface and subsurface water quality testing, soil borings and other soil
49 excavations and testing, soil gas sampling, human health risk assessments, vapor intrusion
50 assessments, National Environmental Policy Act assessments, methane testing, cultural resource
51 studies and any Due Diligence Items (as defined herein) not specifically mentioned in this Section.
52 Buyer represents and warrants to Seller that, should Buyer exercise the Option, it will consummate
53 the purchase of the Property acting in reliance on its own investigations and inspections of the
54 Property and not on any information, representation or warranty provided by, or to be provided by,
55 Seller, except as set forth in Section 6. Except as specifically set forth in Section 6, Buyer
56 acknowledges that Seller is making no warranty(s) as to the nature or condition of the Property
57 and/or any improvements thereon (including, but not limited to, any hidden defects or
58 environmental conditions affecting the Property, including, but not limited to mold, mildew, lead
59 paint, fuel, oil, hazardous materials, or other toxic substances whether known or unknown and
60 whether or not such defects could have been or were discovered). Buyer acknowledges that THE
61 PROPERTY, WITH ALL RIGHTS AND LIABILITIES INCIDENT THERETO, INCLUDING THE IMPROVEMENTS
62 THEREON, IF ANY, WILL BE SOLD “AS IS” WITH ALL DEFECTS WHICH MAY EXIST AND THAT SELLER
63 HAS NOT MADE, WILL NOT MAKE AND SPECIFICALLY DISCLAIMS, ANY AND ALL REPRESENTATION(S)
64 AND/OR WARRANTY(S) AS TO THE PHYSICAL CONDITION OF THE PROPERTY OR ANY OTHER ASPECT
65 OF THE PROPERTY EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 6.

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67 In conjunction with any inspection of the Property, Buyer agrees to deliver to Seller, within thirty
68 (30) days of receipt thereof, true and correct copies of any and all written inspection reports and
69 studies, including, without limitation, those produced in the conduct of the Due Diligence Items,
70 irrespective of whether this Agreement expires, is terminated prior to such expiration, or the
71 Closing occurs as contemplated herein. Buyer agrees that no invasive testing requiring drilling,
72 excavation, or subsurface analysis, shall be performed on the Property without the prior written

73 consent of Seller, which consent shall not be unreasonably withheld and that Buyer is responsible to
74 put the Property back in the same or better condition as existed on the Effective Date on account of
75 any damage and/or destruction which occurs upon the Property on account of the rights granted
76 hereunder in this Section 4. Buyer hereby agrees to and shall, to the extent permitted by
77 applicable law, indemnify and hold Seller harmless, with respect to any liability, claims or
78 losses of any kind suffered or incurred by Seller (including costs of defense), arising from or
79 related to the access to the Property by Buyer or any employee, engineer, contractor,
80 agent, representative or invitee thereof prior to the Closing, except for such liability
81 resulting from the gross negligence or willful misconduct of Seller.
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83 5. Due Diligence. Buyer and/or Buyer's contractors may, on or before the expiration of the Option
84 Period and, after the exercise of the Option prior to the Closing, complete or cause to be completed,
85 at Buyer's sole cost and expense: (a) a Phase I environmental site assessment ("Phase I"), certified
86 for reliance by Seller; (b) an ALTA/NSPS land title survey of the Property made by a reputable and
87 competent licensed professional surveyor, certified to Seller and the Title Insurance Company (the
88 "Survey"); (c) a Title Commitment of the Property; (d) an endangered species study of the Property;
89 (e) a wetlands delineation and study of the Property, certified for reliance to Seller; and (f) a cultural
90 resources study of the Property (collectively, the "Due Diligence Items"). In the event that Buyer
91 exercises the Option, Buyer shall cause to be completed, at Buyer's sole cost and expense, the
92 Survey and the Title Commitment in the event that Buyer has not already caused the Survey and the
93 Title Commitment to be completed. A copy of all studies and reports produced and provided to
94 Buyer in the course of completing the Due Diligence Items shall be provided to Seller in the manner
95 and in the time period prescribed by Section 4.

96 6. Seller Representations. To induce Buyer to enter into this Agreement, Seller hereby represents,
97 warrants, and covenants that Seller has good, marketable and insurable fee simple title to, and sole
98 and exclusive ownership and possession of, the Property, free and clear of any liens, encumbrances
99 and restrictions (except for the liens of the then present year's ad valorem taxes, not yet
100 delinquent), and all easements and rights-of-way now of record in the Office of the Chancery Clerk
101 of the County, if any, which affect the Property.

102 7. Default. In the event that Buyer breaches this Agreement or, after exercise of the Option, fails to
103 close on the purchase of the Property from Seller pursuant to the terms and conditions of this
104 Agreement, then Seller shall have the option to terminate this Agreement by giving notice thereof to
105 Buyer, in which event the Option Price shall be retained by and/or due to Seller as liquidated
106 damages together with the copies of the Due Diligence Items then having been delivered and/or due
107 to Seller, it being otherwise difficult or impossible to determine Seller's actual damages, and all
108 other rights and duties hereunder shall terminate and this Agreement shall be of no further force
109 and effect. Seller hereby agrees that, due to the complexity of this Agreement and the
110 consideration therefor, any right to specific performance, injunctive relief or other relief to cause
111 Buyer to perform its obligations under this Agreement would be inappropriate to seek against

112 Buyer, and Seller hereby agree that said liquidated damages for Buyer's breach of this Agreement
113 are a reasonable amount to satisfy any damages for breach of this Agreement.

114 In the event that Seller breaches this Agreement or, after exercise of the Option by Buyer, Seller fails
115 to timely close solely due to a refusal or default on the part of Seller, then and in such event, Buyer
116 may either: (1) terminate this Agreement by giving written notice to Seller and, at Buyer's option, be
117 entitled to an amount equal to all portions of the Option Price previously paid to Seller, such
118 amount constituting liquidated damages, it being otherwise difficult or impossible to determine
119 Buyer's actual damages; or (2) within ninety (90) days of the date upon which the Closing should
120 have occurred, proceed against Seller for specific performance.

121 Should either party file action to enforce and/or interpret this Agreement, the prevailing party shall,
122 to the extent permitted by applicable law, be entitled to its reasonable attorneys' fees.

123 8. Counterparts. This Agreement may be executed in several counterparts, each of which shall be
124 deemed to be an original, but all of which shall constitute one and the same instrument. This
125 Agreement may also be executed by facsimile or electronic transmission and each facsimile or
126 electronically transmitted signature hereto shall be deemed for all purposes to be an original
127 signatory page.

128 9. Notices. All notices, demands and requests which may or are required to be given by any party
129 hereto to another party hereto shall be in writing, and each shall be deemed to have been properly
130 given when served by overnight delivery service and/or email (provided in the case of email that a
131 response is made to affirm receipt) to the addresses below, or such other addresses as may be
132 specified from one party to the other in the future.

133 To **Seller**: John Cowan Harrell
134 Mary Mallie Harrell
135 JEH Realty, LLC
136 Wilson Arrington Harrell
137 Bancorp South Bank as Trustee of the Lee Ann Harrell Duncan
138 Revocable Trust
139 Lee Ann Harrell
140 Sunnydale Properties, L.P.

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To Buyer: Madison County Economic Development Authority
Attention: Executive Director
135 Mississippi Pkwy
Canton, Mississippi 39046
Email: jdeason@madisoncountyyeda.com

with a copy to:

Jernigan Copeland Attorneys, PLLC
Attn: Arthur F. Jernigan
970 Ebenezer Boulevard
Post Office Box 2249
Madison, MS 39130
ajernigan@jcalawfirm.com

10. Amendments. This Agreement may not be amended or otherwise modified except by an instrument signed by Buyer and Seller.

11. Entire Agreement. This Agreement constitutes the entire agreement between Seller and Buyer for the purposes stated herein (*i.e.*, the sale by Seller of the Property to Buyer), and no other covenants, understandings, warranties, or representations exist between Buyer and Seller. No presumption shall be deemed to exist in favor of or against Seller or Buyer as a result of the negotiation and preparation of this Agreement.

12. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, Seller and Buyer and their respective successors and permitted assigns.

13. Recordation and Disclosures. No party hereto shall record this Agreement in the land records of the County, or otherwise make a copy hereof available to any third-party, except as provided hereinafter, and except that Buyer may provide a copy of this Agreement to any utility provider, including, without limitation, Entergy. Notwithstanding the foregoing, Seller and Buyer agree that Buyer may, at its cost and expense, record in the land records of the County a memorandum of this Agreement sufficient for recording in said records, which memorandum shall contain such disclosures that are mutually agreed upon by the parties hereto but which in no event include any disclosure of the Purchase Price or the Option Price. From and after the Effective Date, and except as otherwise expressly permitted by this Section 23 or otherwise required by applicable law or judicial order, Seller and Buyer shall not, unless first obtaining the other party's written consent, disclose the Option Price and/or the Purchase Price during the Option Period to any third party other than any tax planner, tax preparer, title company, and/or attorney for a party hereto and, (a) with respect to Seller, Seller may additionally disclose the contents of this Agreement to any qualified intermediary, broker(s) and/or consultant(s) engaged by Seller in contemplation of an Exchange, and (b) with respect to Buyer, Buyer may additionally disclose the contents of this

195 Agreement to any third party that is a permitted assignee pursuant to Section 14 hereof. The
196 parties hereto shall inform any third party to whom the Purchase Price and/or the Option Price is
197 disclosed, as allowed by this Agreement, that said information is confidential and request that said
198 information be kept confidential by said third party. Notwithstanding any other provision of this
199 Section 13 to the contrary, any party hereto may provide a copy of this Agreement or a description
200 of all or any portion of the contents hereof to any court of competent jurisdiction in the event such
201 party needs to bring suit in said court under this Agreement to interpret or enforce this Agreement,
202 and Buyer may provide a copy of this Agreement or a description of all or any portion of the
203 contents hereof solely to the extent required pursuant to the Mississippi Public Records Act.

204 14. Assignability. Seller may assign its interests in and to this Agreement without the consent of Buyer.
205 Buyer may assign its interests in and to this Agreement only to (a) any other political subdivision of
206 the County or of the State of Mississippi, or (b) to any industrial or commercial enterprise that is
207 party to a definitive agreement with Buyer, the County, the State of Mississippi or any political
208 subdivisions thereof to the extent that such assignee assumes, by written agreement, all of Buyer's
209 obligations hereunder and, in such circumstance, Buyer shall be released of any and all liability
210 under this Agreement; provided, however, in the event that Buyer assigns this Agreement pursuant
211 to such an industrial enterprise, Seller shall have the right to terminate this Agreement if: (i) Closing
212 with such assignee does not occur within one hundred twenty (120) days following the effective
213 date of said assignment.

214 15. Environmental.

215 (a) In addition to those representations and warranties made by Seller to Buyer in Paragraph 6
216 hereof, Seller hereby represents and warrants that (i) to Seller's knowledge: (1) neither Seller,
217 nor any agent, employee, trustee, beneficiary or representative of Seller, has caused or
218 permitted any Release on, under or at the Property; (2) Seller has not received notice of any
219 Release or other violation of any Environmental Law on the Property which may directly, or
220 indirectly, affect the Property; (3) there does not exist on the Property any condition or
221 circumstance which requires, or may in the future require, cleanup, removal or other remedial
222 action or other response under Environmental Law on the part of Seller or a subsequent owner
223 of all or any portion of the Property, or which would subject Seller, or a subsequent owner, to
224 penalties, damages or injunctive relief under any Environmental Law; and (4) there are not now
225 any leaking tanks, including associated piping, on, under or at the Property; (ii) Seller is not
226 subject to any judgment, decree, order or citation related to or arising out of an Environmental
227 Law with respect to the Property; and (iii) Seller has not been named or listed as a potentially
228 responsible party by any governmental body or agency in a matter arising under any
229 Environmental Law with respect to the Property.

230 For purposes of this Agreement, the following terms have the respective meanings ascribed
231 thereto below:

232 “Release” shall mean any and all releasing, spilling, leaking, migrating (from or to), pumping,
233 pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, dumping, and
234 any other means by which any Hazardous Material may be introduced into or travel through the
235 environment, the Release of which must be remediated or addressed pursuant to order of a
236 regulatory agency of competent jurisdiction, or for which a party to this Agreement receives a
237 claim from a third party related to the Release.

238 “Environmental Law” or “Environmental Laws” shall mean all federal, state, and local laws and
239 regulations governing or relating to the presence, investigation, remediation, or removal of
240 Hazardous Materials located in, on or under property, including, without limitation, the
241 Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended,
242 42 U.S.C. §§ 9601, et seq. (“CERCLA”); the Clean Air Act, as amended, 42 U.S.C. §§ 7401, et seq.
243 (“CAA”); the Clean Water Act, as amended, 33 U.S.C. §§ 1251 et seq. (“CWA”); the Toxic
244 Substances Control Act, as amended, 15 U.S.C. §§ 2601, et seq. (“TSCA”); the Solid Waste
245 Disposal Act (“SWDA”), as amended by the Resource Conservation and Recovery Act, 42 U.S.C.
246 §§ 6901, et seq. (“RCRA”); the Occupational Safety and Health Act of 1970, as amended, 29
247 U.S.C. §§ 651, et seq. (“OSHA”); the Hazardous Materials Transportation Act (“HMTA”), 49 U.S.C.
248 § 5102; and the Atomic Energy Act (“AEA”), 42 U.S.C. § 2011 et seq.

249 “Hazardous Material” or “Hazardous Materials” include: (i) oil or other petroleum products, (ii)
250 “hazardous wastes,” as defined by the RCRA, or similar state or local law, ordinance, regulation
251 or order, (iii) “hazardous substances,” as defined by CERCLA or similar state or local law,
252 ordinance, regulation or order, (iv) “hazardous materials,” as defined by HMTA, or similar state
253 or local law, ordinance, regulation or order, (v) radioactive materials subject to AEA, or similar
254 state or local law, ordinance, regulation or order, and (vi) any other pollutant, contaminant,
255 chemical, or substance whose presence creates or could create a hazard to health or the
256 environment or a violation of any Environmental Law.

257 (b) Seller agrees and covenants that, during the Option Period, (i) neither Seller nor any of Seller’s
258 agents, employees, contractors, invitees, or assignees shall cause or allow or be permitted to
259 cause or allow any Hazardous Material to be brought upon, handled, kept, stored or used in or
260 on the Property in violation of any federal, state or local law, rule or regulation; and (ii) neither
261 Seller nor any of Seller’s agents, employees, contractors, invitees or assignees shall cause or
262 permit to be caused any Hazardous Material to be Released in, upon or beneath the Property.

263 16. Applicable Law. This Agreement shall be solely and exclusively governed by, and construed in
264 accordance with, the law of the State of Mississippi. Venue for any legal or equitable action arising
265 from this Agreement shall be solely and exclusively in the County.

266 17. Time. Time is of the essence of this Agreement.

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268 18. Authority. Each person executing this Agreement warrants and represents that he/she is fully
269 authorized to do so.

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19. Dates. If the date for the performance of any obligation or the expiration of any time period hereunder falls on a Saturday, Sunday or legal holiday under the laws of the United States, such date shall be extended until the next day which is not a Saturday, Sunday or legal holiday.

20. Headings. The descriptive headings used in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

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IN WITNESS WHEREOF, each of the undersigned parties has executed this Agreement as of the Effective Date.

BUYER:

Madison County Economic Development Authority

By: _____

Name: Joseph Deason

Title: Executive Director

Date: _____, 2021

SELLER:

John Cowan Harrell

Mary Mallie Harrell

JEH Realty, LLC

Wilson Arrington Harrell

Bancorp South Bank as Trustee of the Lee Ann Harrell Duncan Revocable Trust

Lee Ann Harrell

Sunnydale Properties, L.P

By: _____

Print Name:

Title:

Date: _____, 2021

EXHIBIT "A"

Description of the Property

All of Seller's parcels located in E1/2 of the NE1/4 of Section 19 and W1/2 of the NW1/4 of Section 20 Township 7 North, Range 2 East, City of Ridgeland, Madison County, Mississippi, which parcels are believed by Seller to be described on the Madison County, Mississippi, tax map by the following Parcel numbers:

Parcel Number:	Approximate Acreage:
072D-19A-040/00.00	
072D-19A-039/00.00	
072D-19A-038/00.00	
072D-19A-037/00.00	
Total:	

And which parcels are believed by Seller to collectively comprise approximately 3 +/- acres.

EXHIBIT "B"

Map of the Property

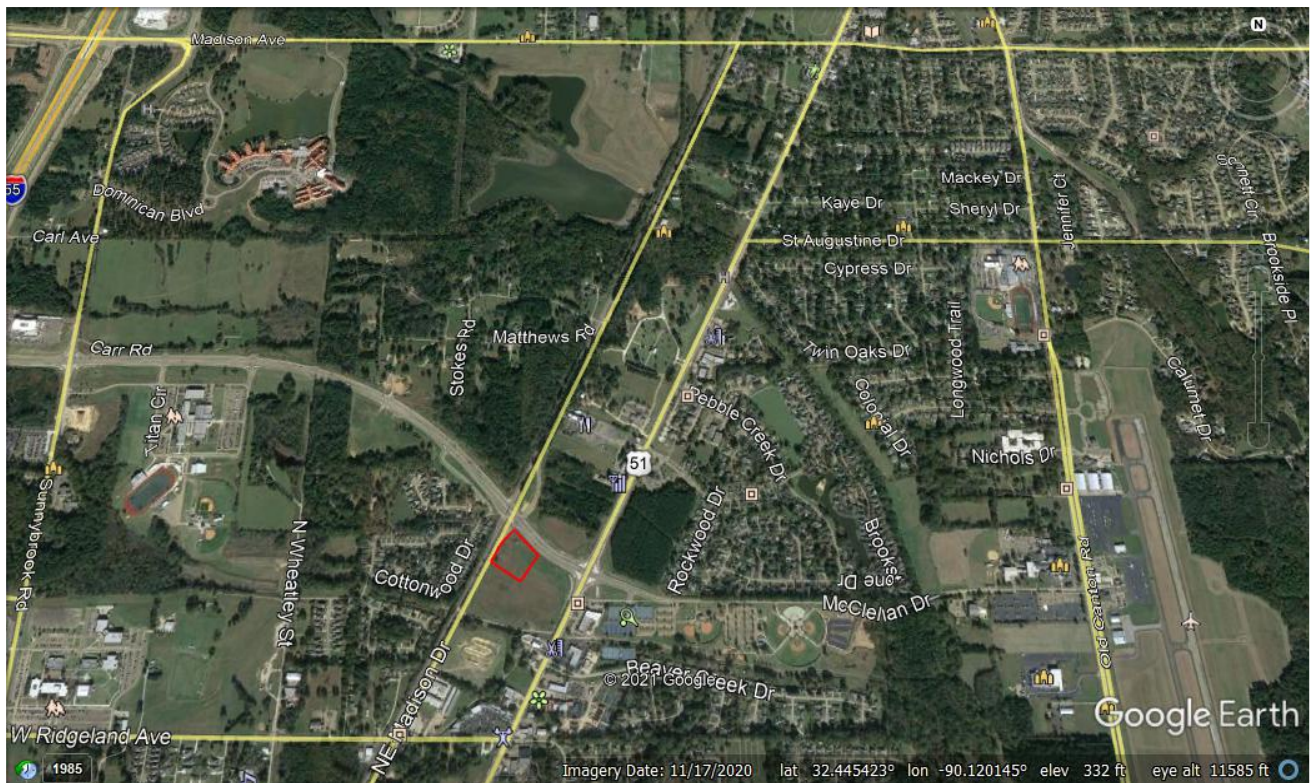


Exhibit "C"

Colony Park Access Road

