

RESOLUTION NO. 2021 - I

**A RESOLUTION TO APPROVE THE PURCHASE OF PROPERTY
LOCATED IN THE CITY OF HARDY FROM ERNEST AND LYNN
SUTHERLAND.**

WHEREAS, the City of Hardy (hereinafter "the City") has the authority to purchase real property pursuant to A.C.A. §14-54-302; and

WHEREAS, the City desires to purchase from Ernest and Lynn Sutherland

Exhibit A.

WHEREAS, the terms of the purchase will be as follows:

See attached Promissory Note and Offer and Acceptance

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF HARDY, ARKANSAS: that the Mayor and City Clerk have the authority to execute any and all documents necessary to purchase the aforementioned property from Ernest and Lynn Sutherland

PASSED AND APPROVED this 7th day of December, 2021.

Filed 12/14/21 *cm*
City of Hardy
Arkansas Clerk

Mayor Ernie Rose
Ernie Rose, Mayor

ATTEST:

Darlene Wilson
City Recorder-Treasurer



EXHIBIT A

Part of Lots one (1) and two (2), Block Two (2) of Clayton's Addition to the Town of Hardy and part of the South Half of the Northwest Quarter (S/2-NW/4) of Section 11, Township 19 North, Range 05 West (T19N0-R05W) of the Fifth Principal Meridian (5th P.M.), Sharp County, Arkansas, more particularly described as follows: Beginning at an iron pin on the West right of way of U.S. Highway 62/63, South 05 degrees 25 minutes East 542.54 feet of the Northeast (NE) corner of the Southwest Quarter of the Northwest Quarter (SW/4-NW/4) of Section 11, thence South 58 degrees 12 minutes 27 seconds West 270.27 feet to an iron pin on the North right of way of BNSF Railroad, thence along said right of way South 61 degrees 42 minutes East 100.11 feet, thence South 65 degrees 50 minutes East 100.11 feet, thence South 70 degrees 19 minutes East 134.03 feet, thence South 72 degrees 29 minutes 29 seconds East 82.03 feet to the center of a creek, thence leaving said railroad right of way and along said creek North 11 degrees 33 minutes 30 seconds West 223.60 feet to the West right of way of U.S. Highway 62/63, thence along said right of way North 59 degrees 28 minutes West 29.82 feet, thence North 51 degrees 33 minutes 38 seconds West 106.87 feet back to the Point of Beginning, containing 1.35 acres, more or less.

PROMISSORY NOTE

\$125,000.00

DATE: _____

FOR VALUED RECEIVED, the undersigned (hereinafter collectively referred to as Maker, whether one or more), jointly and severally promise to pay to Ernest Sutherland and Lynn Sutherland (hereinafter collectively referred to as Payee, and Payee and its heirs, successors and assigns from time to time hereinafter collectively referred to as Holder), at the principal office of Payee or at such other place as Holder may designate in writing from time to time, the principal sum of One Hundred Twenty-five Thousand and No Cents (\$125,000.00), with interest thereon at the rate of ZERO percent (0%) per annum or on such thereof as from time to time is outstanding and unpaid, from the date hereof, in the amounts hereinafter set forth, in lawful money of the United States of America, such principal and interest to be paid in the following manner, to-wit:

Two installments of \$50,000.00 and a final installment of \$25,000.00 shall be paid. The first installment in the amount of \$48,500.00 (after credit of \$1,500.00 paid on _____) being due and payable on or before December 31, 2021; the second installment in the amount of \$50,000.00 being due and payable on or before the October 22, 2022 and the third and final installment of \$25,000.00 being due and payable on the October 22, 2023. If at any time there shall be default in (20) days, a delinquent charge in the amount of 5% of the payment may be charged; if such default continued for a total of thirty days, then thereafter the interest on the entire unpaid principal indebtedness aforesaid shall, at the election of the payee herein without notice be at the maximum rate allowed by law until paid (in lieu of the rate first above specified). That the City of Hardy shall own an undivided twenty percent (20%) share and the Hardy Advertising and Promotion Commission shall own an undivided eighty percent (80%) share.

That City of Hardy and the Hardy Advertising and Promotion Commission agree that Ernest Sutherland and Lynn Sutherland shall be allowed to retain the rights to lease the property for fireworks vendors thirty (30) days prior to and during the 4th of July Independence holiday during the term of this promissory note. The rent will be paid directly to the Ernest Sutherland and Lynn Sutherland. Upon final payment of this promissory note the right to lease the property by the Sutherlands shall cease. The Sutherlands agree to defend, indemnify, and hold harmless the City of Hardy and the Hardy Advertising and Promotion Commission against any claim, expense, loss or liability as a result of any breach by Lessee, Lessee's agents, servants or employees of any covenant or condition of this lease, or as a result of the carelessness, negligence, or improper conduct of Lessee, Lessee's agents, servants or employees.

1. The indebtedness evidenced by this Note and the obligations created hereby are secured by inter alia that certain INCLUSIVE MORTGAGE AND SECURITY AGREEMENT made by the Mortgagor which is the Maker hereof in favor of payee as the mortgagee therein dated of even date herewith and encumbering certain property described on Exhibit A attached hereto, which Mortgage is to be filed of record on or about the date hereof in the public records of Sharp County, Arkansas,

(the Mortgage, together with all other documents now or hereafter evidencing or securing or in any way related to the indebtedness evidenced hereby, hereinafter referred to collectively as the Security Instruments).

2. It is hereby expressly agreed that, should any default be made in the payment of principal or interest as stipulated above (which said default shall remain uncured for a period of 30 days), or should there be any default in the performance of the terms and provisions of the Security Instruments, then and in either or each event, the principal indebtedness evidenced hereby, plus accrued interest, and any other sums advanced hereunder may, at the option of Holder and without further Notice to Maker at once become due and payable and may be collected forthwith, regardless of the stipulated date maturity. Interest shall accrue on the outstanding principal balance of this Note from the date of any default hereunder and for so long as such default continues, regardless of whether there has been an acceleration of the maturity of the indebtedness evidenced hereby as set forth herein, at the maximum lawful rate. Time is of the essence of this Note. In the event this Note, or any part thereof, is collected by or through an attorney, Maker agrees to pay all costs of collection including, but not limited to, reasonable attorneys fees.

3. It is hereby expressly agreed that if, from any circumstances whatsoever, fulfillment of any of the provision of this Note at the time performance of such provision shall be due shall involve transcending the limit of validity presently prescribed by any applicable usury statute, or other applicable law with regard to obligations of like character and amount, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Note that is in excess of the limit of such validity; but such obligation shall be fulfilled to the limit of such validity. Notwithstanding the foregoing, in the event Holder inadvertently receives any payment under this Note that exceeds the limit of such validity, such payment shall automatically be deemed applied in reduction of the principal indebtedness evidenced by this Note, or upon written request of Maker, such payments shall be returned to Maker.

4. Except as hereinbefore expressly provided, presentment for payment, demand, protest and notice of demand, notice of dishonor and notice of nonpayment and all other notices are hereby waived by maker. No failure to accelerate the debt evidenced hereby by reason of default hereunder, acceptance of a past due installment, Promissory Note or indulgences granted from time to time shall be construed (i) as a novation of this Note or as a restatement of the indebtedness evidenced hereby or as a waiver of such right of acceleration or of the right of Holder thereafter to insist upon strict compliance with the terms of this Note, or (ii) to prevent the exercise of such right of acceleration or any other right granted hereunder or by the laws of the United States and/or any State thereof; and or which may hereafter be provided, which would produce a result contradictory to or in conflict with the foregoing. No extension of the time for payment of this Note, shall operate to release, discharge, modify, change or affect the original liability of Maker under this Note, either in whole or in part, unless Holder agrees otherwise in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

5. Maker hereby waives and renounces for itself, its successors and assigns and for any and all endorsers, guarantors and sureties, all rights to the benefits of any statute of limitations and any moratorium, reinstatement, marshalling, forbearance, valuation, stay, extension, redemption,

appraisement, exemption and homestead now provided, or which may hereafter be provided, by the Constitution and Laws of the United States of America or of the State of Arkansas.

6. Maker hereof is granted an absolute right to prepay the outstanding principal balance, in whole or, from time to time, in part, without penalty. Any partial prepayment shall be applied first to accrued interest and the balance on the principal and shall not entitle the Maker to omit any subsequent installment becoming due after the date of such prepayment.

7. This Note is intended as a contract under, and shall be construed and enforceable in accordance with the laws of the State of Arkansas and the applicable laws of the United States of America.

8. As used herein, the terms Maker, Payee and Holder shall be deemed to include their respective heirs, successors, legal representatives and assigns, whether by voluntary action of the parties or by operation of law.

IN WITNESS WHEREOF, Maker has executed this Note under seal on the date first above mentioned and written.

Makers:

Jeff Munroe, Acting Chairman
Hardy Advertising and Promotion Commission

Ernie Rose, Mayor of Hardy

Payees:

Darlene Wilson, Recorder/Treasurer

Ernest Sutherland

Lynn Sutherland

REAL ESTATE CONTRACT (Offer and Acceptance)

Date: _____

1. **BUYER:** City of Hardy and Hardy Advertising and Promotion Commission
offers to buy, subject to the terms set forth herein, the following property:

2. **PROPERTY DESCRIPTION AND ADDRESS:**

Part of Lots one (1) and two (2), Block Two (2) of Clayton's Addition to the Town of Hardy and part of the South Half of the Northwest Quarter (S/2-NW/4) of Section 11, Township 19 North, Range 05 West (T19N0-R05W) of the Fifth Principal Meridian (5th P.M.), Sharp County, Arkansas, more particularly described as follows: Beginning at an iron pin on the West right of way of U.S. Highway 62/63, South 05 degrees 25 minutes East 542.54 feet of the Northeast (NE) corner of the Southwest Quarter of the Northwest Quarter (SW/4-NW/4) of Section 11, thence South 58 degrees 12 minutes 27 seconds West 270.27 feet to an iron pin on the North right of way of BNSF Railroad, thence along said right of way South 61 degrees 42 minutes East 100.11 feet, thence South 65 degrees 50 minutes East 100.11 feet, thence South 70 degrees 19 minutes East 134.03 feet, thence South 72 degrees 29 minutes 29 seconds East 82.03 feet to the center of a creek, thence leaving said railroad right of way and along said creek North 11 degrees 33 minutes 30 seconds West 223.60 feet to the West right of way of U.S. Highway 62/63, thence along said right of way North 59 degrees 28 minutes West 29.82 feet, thence North 51 degrees 33 minutes 38 seconds West 106.87 feet back to the Point of Beginning, containing 1.35 acres, more or less.

3. **PURCHASE PRICE:** The Buyer will pay \$125,000.00 for the property at closing. The Buyer shall receive a closing cost credit of \$1,500.00 that was paid on _____ and in the event the closing is not completed before the end of 2021 then the Buyer shall receive an additional credit of \$48,500.00 that will have been paid to the Seller on December 31, 2021 pursuant to the terms of the promissory note.

4. **EARNEST MONEY:** The Buyer herewith tenders a check for \$ _____ 0 _____ as earnest money, which shall apply on purchase price or closing costs. Execution of this

agreement shall serve as a receipt for said earnest money. This sum shall be deposited by Escrow Agent, and if title requirements are not fulfilled, it shall be refunded to Buyer. If, after acceptance, Buyer fails to fulfill his obligations, the earnest money shall become liquidated damages, WHICH FACT SHALL NOT PRECLUDE SELLER OR AGENT FROM ASSERTING OTHER LEGAL RIGHTS WHICH THEY MAY HAVE BECAUSE OF SUCH BREACH.

5. **CONVEYANCE:** Conveyance shall be made to Buyer, or as directed by Buyer by general warranty deed except it shall be subject to recorded restrictions and easements, if any, which do not materially affect the value of the property.

6. **TITLE INSURANCE:** Within twenty (20) days of the acceptance of this offer, Seller shall deliver to Buyer a commitment from a title insurance company acceptable to Buyer (the "Title Company") for an ALTA owner's title insurance policy with an extended coverage over general exceptions 1-5 in the amount of the Purchase Price showing good and merchantable title to the Property in the Seller, subject only to the following items ("Permitted Exceptions"):

- (a) current general real estate taxes not yet due and payable;
- (b) building lines, public utility easements, roads and highway's, if any, and covenants, conditions, and restrictions of record; provided that the same are not violated by Buyer's intended use thereof and contain no reverter of forfeiture provisions.

7. **SURVEY:** If a survey is necessary, it will be paid at the Buyers expense.

8. **UNPERMITTED EXCEPTIONS AND SURVEY DEFECTS.** In the event the title commitment referred to in Paragraph 6 discloses unpermitted exceptions or the survey

reveals unacceptable conditions, Seller shall have the exceptions removed from the commitment or correct such survey defects, or in the alternative, with Buyer's consent, have the Title Company insure against loss or damage that may be occasioned by such exception, or survey defects, no later than thirty (30) days from the date of delivery thereof, and in such event, the Closing shall occur fifteen (15) days after delivery of the modified commitment or the date of Closing specified herein, whichever is later. If Seller is unable to have the exceptions removed or to correct any survey defects, or in the alternative, to obtain the commitment for title insurance specified above as to such exceptions or survey within the specified time, Buyer may terminate this Agreement or the parties may agree to close upon such terms and conditions as shall be agreed to at such time. If the Agreement is terminated as aforesaid, it shall become null and void without further action of the parties and all obligations hereunder shall be terminated. In such event the earnest money which was delivered to Escrow Agent shall be returned to Buyer within one (1) business day after receipt of notice from Buyer declaring the Agreement terminated.

9. **PRORATIONS:** Taxes and special assessments due on or before closing shall be paid by Seller. Any deposits on rental property are to be transferred to Buyer at closing. Insurance, current general taxes and special assessments, rental payments, and any interest on assumed loans shall be prorated as of closing unless otherwise specified herein.

10. **CLOSING:** This transaction shall close at the offices of Sharp County Title on or before thirty (30) days after the execution of this agreement, provided that if any objections to the title shall not have been cleared up by that time then the closing shall be held at such place within ten days after all such objections shall have been cleared up or waived in accordance with the terms of this agreement.

11. **POSSESSION:** Seller shall vacate the property and deliver possession to Buyer at closing.

12. **FIXTURES AND ATTACHED EQUIPMENT:** Unless specifically excluded herein, all fixtures and attached equipment, if any, are included in the purchase price. Such fixtures and attached equipment shall include, but not be limited to, the following: window air conditioners, carpeting, indoor and outdoor light fixtures, window and door coverings, gas or electric grills, awnings, mail boxes, garage door openers and remote units, water softeners, propane and butane tanks, antennas and any other items bolted, nailed, screwed, buried or otherwise attached to the real property in a permanent manner.

13. **INSPECTIONS AND REPAIRS:** Buyer certifies that Buyer has had the opportunity to inspect the property and is not relying upon any warranties, representations or statements of Agent or Seller as to age or condition of improvements, other than those specified herein.

14. **RISK OF LOSS:** The risk of loss or damage to the property by fire or other casualty occurring up to the time of closing is assumed by the Seller.

15. **SELLER WARRANTIES.** The Seller represents, warrants and covenants that the following are true as of the date hereof and shall be true as of the date of the closing:

- (a) The Seller has the requisite power to enter into and perform this Agreement.
- (b) The execution, delivery and performance by the Seller of this Agreement does not and will not contravene, or constitute a default under any provision of applicable law or regulation or of any agreement, judgment, injunction, order, decree or other instrument binding

upon the Seller or result in the creation of any lien or other encumbrance of any asset of the Seller, except as herein provided.

(c) There is no action, suit or proceeding pending, or to the Seller's knowledge threatened (nor to the knowledge of the Seller is there any basis therefor), against or affecting the Seller, the Property or any portion thereof in any court or before any arbitrator or before or by any governmental or self-regulatory agency or instrumentality (i) which in any manner raises any question affecting the validity or enforceability of this Agreement or any other agreement or instrument to which the Seller is a party and that is to be used in connection with, or is contemplated by, this Agreement, or (ii) in which there is a reasonable possibility of an adverse decision that could materially adversely affect the business, financial position or results of operation of the Seller.

16. **ENVIRONMENTAL COMPLIANCE.** As of the date hereof, there are no violations, and Seller has no knowledge of any violations, at the Property or dwelling of any code, federal or state environmental law, including but not limited to the federal legislation commonly referred to as CERCLA and/or RCRA and including but not limited to, building, fire, water, soil and air pollution. Seller warrants and represents to the best of his knowledge that the property does not contain friable asbestos, radon gas, mold, urea, formaldehyde, electromagnetic fields, underground storage tanks, or other substances that may affect the property or the occupants of the property. Seller specifically disclaims any knowledge as to whether Buyer's intended use will require licenses or permits from PC&E or EPA, and failure to obtain such licenses or permits shall not void this agreement.

17. **CLOSING EXPENSES.** In addition to the obligations specified herein, the expenses of this transaction shall be paid as follows:

The Buyer shall be paying all closing cost.

18. **REAL ESTATE COMMISSION.** Neither Buyer nor Seller have been represented by a real estate agent, broker or company, and no real estate commission is due anyone.

19. **ASSIGNABILITY.** This Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, assignees, and successors of the respective parties.

20. **SURVIVAL OF WARRANTIES AND REPRESENTATIONS.** All warranties and representations made herein shall survive the Closing and shall not be merged into the Closing.

21. **NOTICES.** All notices and demands hereunder shall be in writing and faxed, personally delivered or mailed by registered or certified United States mail, return receipt requested, postage prepaid to:

BUYER:

City of Hardy
PO Box 5
Hardy, AR 72542

SELLER:

Ernest and Lynn Sutherland
2874 Waterleaf Drive
Germantown, TN 38138

and

Hardy Advertising and Promotion Commission
PO Box 1005
Hardy, AR 72542

22. **COUNTERPARTS.** This Agreement may be executed in multiple counterparts each of which shall be regarded as an original hereof but all of which together shall constitute one in the same.

23. **NO CONSTRUANCE IN FAVOR OF THE DRAFTER.** This agreement has been the subject of negotiations by the parties, and this agreement shall not be construed against any party merely because of such party's involvement in its initial preparation, negotiation or drafting.

24. **GOVERNING LAW--CONSENT TO JURISDICTION.** All matters with respect to this Agreement, including, but not limited to, matters of validity, construction, effect and performance, shall be governed by the laws of the State of Arkansas. In the event a dispute shall arise between the parties pertaining to the validity, construction, effect, performance or any other aspect of this Agreement, the parties hereby consent to the jurisdiction of the Sharp County Circuit Court.

25. **ENTIRE AGREEMENT.** This Agreement, shall, upon its execution, constitute the entire agreement and understanding of the parties and shall not be altered, modifies or changed unless same is in writing and executed by all parties.

THIS IS A LEGALLY BINDING CONTRACT WHEN SIGNED BY BOTH BUYER AND SELLER, IF NOT UNDERSTOOD, SEEK LEGAL ADVICE.

BUYERS:

Jeff Munroe, Acting Chairman
Hardy Advertising and Promotion Commission

Ernie Rose, Mayor of Hardy

Darlene Wilson
Darlene Wilson, Recorder/Treasurer

This offer is accepted this _____ day of _____, 20____ at _____ a.m/p.m.

SELLERS:

Ernest Sutherland

Lynn Sutherland