

# REAL ESTATE PURCHASE AND SALE CONTRACT

**THIS REAL ESTATE PURCHASE AND SALE CONTRACT**, is made and entered into as of the \_\_\_ day of 2010, by and between (**Seller**) HPJ Properties, LLC and ("**Buyer**") \_\_\_\_\_

**WHEREAS**, Seller is the owner of the real property commonly known as: The Beach House Grill Restaurant and the Seller's right, title and interest is legally described on Exhibit "A" ("**Subject Property**").

**WHEREAS**, Buyer was the high bidder at the auction sale of the Subject Property conducted February 25<sup>th</sup>, 2010, and Seller has accepted Buyer's auction bid; and

**WHEREAS**, Seller desires to sell and Buyer desires to purchase the Subject Property upon the terms and conditions set forth below.

**NOW, THEREFORE**, for and in consideration of the covenants, warranties, and other undertakings set forth below, the parties hereto agree as follows:

**1. Section The Subject Property.** Seller hereby agrees to sell and convey to Buyer by Warranty Deed, all of Seller's right, title and interest in and to the Subject Property, together with Seller's right, title and interest in and to all buildings, improvements and fixtures ("**Improvements**") located thereon.

**2. Section The Purchase Price.** Buyer hereby agrees to purchase and to pay to Seller as consideration for the conveyance of the Subject Property and Improvements, the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_ ), plus a Buyer's premium of 10% of the Buyer's bid amount (collectively "**Purchase Price**") in the following manner:

(1) Initial Earnest Money in the amount of \$10,000, in the form of a certified check made payable to self, and endorsed to: Irby Heard P.C. Trust Account being the required auction sale registration fee, which shall guarantee that the terms and conditions of this Agreement shall be fulfilled by Buyer, said deposit to be applied to the Purchase Price at closing.

(2) Additional Earnest Money in the amount of \$ \_\_\_\_\_, being Five Percent (5%) of the Buyer's bid amount, in the form of a check made payable to: Irby Heard P.C. Trust Account, as a guarantee that the terms and conditions of this Agreement shall be fulfilled by Buyer, said deposit to be applied to the Purchase Price at closing.

(3) The balance in cash or certified funds at closing, subject to prorations and adjustments as provided herein.

**3. Section Prorations and Adjustments.** On the Closing Date (as defined below) there shall be adjustments and/or prorations to the Purchase Price as follows:

3.1 Taxes. Seller shall pay, on or before Closing Date, all year 2008 general ad valorem taxes and installments of unpaid special assessments with applicable interest imposed against Seller's interest in the Subject Property which are past due and payable. General ad valorem real estate taxes and installments of unpaid special assessments for the year 2009 shall be prorated as of the Closing Date, based on the amount of such taxes and special assessments for the year 2008. All general ad valorem taxes and any special taxes, installments of unpaid special assessments (exclusive of rebates and penalties), or any other tax or charge of any nature whatsoever that may accrue or that becomes due and payable following the Closing Date are hereby assumed and shall be paid by Buyer.

3.2 Utility Expense. All utility expenses for the month in which closing occurs shall be prorated as of the Closing Date.

**4. Section Closing Date.** The transactions contemplated hereby shall be consummated on or before thirty (30) days from the date of this contract ("**Closing Date**"). Possession of the Subject Property shall be delivered to Buyer upon closing. If the closing cannot occur on the scheduled Closing Date because of the operation of the provisions of this Agreement and not due to a default by either party hereunder, it shall occur on such later date as the parties may agree upon in writing. The closing of the transactions contemplated by this Agreement shall take place at the offices of the title insurance company, or as otherwise mutually agreed by the parties.

**5. Section Buyer's Inspections.** Buyer acknowledges that it has had the opportunity to enter upon the Subject Property for the purpose of performing, at Buyer's cost and expense, such inspections and investigations of the physical, structural, mechanical and/or environmental condition of the Subject Property and Improvements as Buyer deemed appropriate to satisfy itself as to the condition of the Subject Property.

**6. Section Representations, Warranties and Agreements of Seller.** Seller represents, warrants and agrees as follows:

6.1 Title to Properties. Seller has recorded title to the Subject Property and Improvements as set forth on Exhibit "A", subject to liens, encumbrances, easements, covenants, and restrictions of record.

6.2 Property Condition. Buyer acknowledges that Buyer has been given the opportunity to personally inspect the Subject Property and Improvements, that neither Seller nor any party on Seller's behalf has made any representations or warranties concerning the condition of the Subject Property or Improvements, and that Buyer is not relying upon any representation or warranty made by or on behalf of Seller as to any aspect of the Subject Property or Improvements, including, but not limited to: (i) the physical condition thereof (including the environmental condition); (ii) any restrictions

related to the use of the Subject Property and Improvements, or (iii) the suitability of the Subject Property and Improvements for any purpose. Buyer accepts the Subject Property and Improvements "AS IS" with respect to all such conditions existing now or which may arise in the future. Buyer represents to Seller that Buyer has made its own independent investigation of the Subject Property and Improvements and is relying solely on such independent investigation in agreeing to this purchase. Buyer hereby releases Seller from any claims, liability or expense (including, without limitation, reasonable attorneys' and consultants' fees, and court costs), known or unknown, contingent or otherwise, arising out of, or in any way related to the physical and/or environmental condition of the Subject Property and Improvements.

**7. Section Representations and Warranties by Buyer.** Buyer represents, warrants and agrees that (i) Buyer is a \_\_\_\_\_ duly organized, validly existing and in good standing under the laws of the State of ALABAMA (ii) except as otherwise provided herein, Buyer has the complete and unrestricted power to enter into, execute, deliver, perform and consummate this Agreement; (iii) Buyer has available adequate liquid funds to close this transaction; and (iv) this Agreement constitutes the valid and binding obligation of Buyer.

**8. Section Conditions Precedent to Buyer's Obligations.** Each and every obligation of Buyer to be performed in connection with the closing on the Closing Date shall be subject to the satisfaction of the following conditions:

8.1 Representations and Warranties True at Closing Date. The representations and warranties made by Seller in this Agreement shall be true on and as of the Closing Date with the same effect as though such representations and warranties had been made or given on and as of the Closing Date.

8.2 Compliance with Agreement. Seller shall have performed and complied with all of Seller's obligations under this Agreement which are to be performed or complied with by Seller prior to or on the Closing Date.

8.3 Title Insurance and Title Matters.

(1) Title Commitment. Within Five (5) days from the date of this Agreement, Seller shall cause to be issued a title company's binding commitment to issue owner's policy of title insurance the ("**Title Commitment**") for the Subject Property and conforming to the following specifications:

- (a) The policy will be ALTA Owner's form
- (b) The insured will be Buyer; and
- (c) The coverage amount will be equal to the Purchase Price.

(2) Approval of Title Matters. If the Title Commitment discloses defects in

title that are unacceptable to Buyer, Buyer shall advise Seller of same in writing within three (3) days from Buyer's receipt of the Title Commitment. All matters appearing in the Title Commitment and to which Buyer does not object within said period shall be the "**Permitted Exceptions.**" As to any matters to which Buyer objects, Seller may remedy such matters as are susceptible of being remedied and shall, on or prior to the Closing Date, have delivered to Buyer a revised commitment reflecting that such remedy has been effected. If Seller does not so remedy such matters by the Closing Date, Buyer shall have the option of (i) consummating the transaction contemplated hereby and accepting such title as Seller is able to convey without change in or to the terms hereof, or (ii) terminating this Agreement and receiving the return of its Earnest Money deposits. The cost of the Title Commitment and the title policy shall be shared equally by the parties.

8.4 Financing. This Agreement **is not** conditioned upon Buyer obtaining a commitment for purchase money financing.

**9. Section Conditions Precedent to Seller's Obligations.** Each and every obligation of Seller to be performed on the Closing Date shall be subject to the satisfaction and fulfillment of the following conditions:

9.1 Representations and Warranties True at Closing. The representations and warranties made by Buyer in this Agreement shall be true on and as of the Closing Date as though such representations and warranties were made at and as of the Closing Date.

9.2 Compliance with Agreement. Buyer shall have performed and complied with all of its obligations under this Agreement which shall be performed or complied with by it prior to or on the Closing Date.

**10. Section Termination Events.**

10.1 Termination Event, Defined. For purposes of this Section, a termination event shall be deemed to exist (i) if any of the conditions precedent to the performance of the obligations of the other party have not been fulfilled and cannot be fulfilled on or prior to the Closing Date and has not been waived either by the terms of this Agreement or otherwise, or (ii) if a material default shall be made by said party in the observance or in the due and timely performance of any of the covenants and agreements herein contained that cannot be cured on or prior to the Closing Date and has not been waived by the other party in writing.

10.2 Caused by Buyer. In the event that Buyer causes a termination event to exist, then Seller may, at Seller's option, take such action as may be available under or pursuant to this Agreement or otherwise at law or in equity, including but not limited to the prompt distribution to Seller of all Earnest Money as liquidated damages or specific performance.

10.3 Caused by Seller. In the event that Seller causes an event of termination

to exist then Buyer may, at its option, elect one of the following:

(1) Buyer may give Seller written notice of Buyer's intention to terminate this Agreement in its entirety on a date specified therein, which date shall not be earlier than ten (10) days after such notice is given, and if the events or circumstances creating or giving rise to such event of termination have not been rectified or cured by said date, then this Agreement shall, in its entirety, terminate, and neither party shall have any obligations to or rights against the other; provided, however, that Buyer shall receive a refund of its Earnest Money; or

(2) Buyer may take such other actions as are available under or pursuant to this Agreement or otherwise at law or in equity, including but not limited to specific performance.

**11. Section Consummation of Transaction.** Assuming (i) all conditions to this Agreement have been met, (ii) the obligations of Seller and Buyer have either been performed or waived by the party for whose benefit said obligation exists, (iii) there have been no changes as respects any of Seller's warranties, representations or agreements herein and the same are true and correct, then the Closing shall take place as follows:

11.1 Seller's Actions. Seller shall deliver to Buyer at the place specified in this Agreement (i) a special warranty deed, properly executed and conveying Seller's right, title and interest in the Subject Property to Buyer.

11.2 Buyer's Actions. Buyer shall perform its obligations hereunder.

**12. Section Miscellaneous.**

12.1 Complete Agreement. This Agreement contains a complete and exclusive statement of all the arrangements between the parties hereto, and all prior negotiations and agreements between the parties hereto are superseded by this Agreement.

12.2 Waiver, Amendment. Any condition of this Agreement which may legally be waived may be waived at any time by the party hereto which is entitled to the benefit thereof, and this Agreement, and any term, condition or covenant hereof, may be amended, modified, supplemented or canceled by all parties hereto at any time before the Closing Date only by an instrument in writing signed by the appropriate party or parties.

12.3 Expenses. All costs and expenses incurred by each party hereto in connection with this Agreement and the transactions contemplated herein shall, unless otherwise provided herein, be paid by the party incurring the expense. All standard closing costs and fees shall be shared equally by the parties.

12.4 Survival. All indemnities, releases, representations and warranties in this Agreement shall survive Closing and shall not be affected by the recording of the deed.

The parties shall indemnify, defend and hold one another harmless from and against any and all liabilities, losses, claims, damages and costs incurred or suffered by the other party by reason of, resulting from, in connection with, or arising in any manner whatsoever out of a breach of any representation or warranty in this Agreement.

12.5 Brokers. Seller has utilized the brokerage services of: Christopher R. Kane and the auction services of Auction Services, Inc. in connection with this transaction. Seller will pay said broker and auctioneer for their services at Closing in accordance with Seller's separate agreements with said parties. In the event Buyer has engaged a licensed real estate broker in connection with this transaction and in accordance with the terms and conditions of auction and Closing is consummated, Buyer's broker will be paid a three percent (3%) commission, to be funded from the Buyer's Premium at Closing.

12.6 Loss or Damage. If, prior to the Closing Date, all or any part of the Subject Property is taken by eminent domain (or is the subject of a pending or contemplated taking which has not been consummated) or damaged or destroyed by fire or other casualty, then Buyer may, by written notice to Seller, (i) cancel and terminate this Agreement and all of Buyer's duties and obligations hereunder, or (ii) elect not to exercise this option to cancel, in which event there shall be no adjustment to any of the terms herein set forth, this Agreement shall be consummated as scheduled and Buyer shall be entitled to receive all of the proceeds of the taking by eminent domain or insurance proceeds.

12.7 Time of Essence. Time is of the essence of this Agreement.

12.8 Notices. All notices, requests, demands and other communications hereunder shall be deemed to have been duly given if sent by certified or registered mail with postage prepaid, hand delivered, or sent by facsimile followed by telephone confirmation of receipt of such facsimile.

1) **if to Seller:**

\_\_\_\_\_

with copy to:

\_\_\_\_\_

2) **if to Buyer:**

\_\_\_\_\_

with copy to: \_\_\_\_\_

or to such other person and place as either party may identify to the other in writing by notice in compliance with this paragraph.

12.9 Further Acts. Seller and Buyer agree to perform or cause to be

performed such further acts as may be reasonably necessary to consummate the transaction contemplated hereby.

12.10 Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, beneficiaries, personal representatives, successors and assigns.

12.11 Headings. The headings in the sections of this Agreement are inserted for convenience only and shall not constitute a part thereof.

12.12 Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original of this Agreement, but all of which together shall constitute one and the same instrument.

12.13 Governing Law. This Agreement is a binding real estate contract and shall be governed, construed and interpreted in accordance with the substantive laws of ALABAMA.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first above written.

\_\_\_\_\_  
HPJ Properties, LLC  
"SELLER"

\_\_\_\_\_  
By \_\_\_\_\_  
"BUYER"