

BILL NO. _____

ORDINANCE NO. 23-26

AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF FREDERICKTOWN, MISSOURI, TO EXECUTE AN AGREEMENT BY AND BETWEEN THE CITY OF FREDERICKTOWN AND SEEDTIME AND HARVEST, L.L.C. RELATIVE TO THE SALE OF REAL ESTATE; FURTHER SAID ORDINANCE SHALL AUTHORIZE AND DIRECT THE CITY CLERK TO ATTEST THE SIGNATURE OF THE MAYOR.

WHEREAS, the residents are in need of additional industry in the City.

WHEREAS, the City negotiated with Seedtime and Harvest, L.L.C. terms advantageous to the citizens for the sale of real estate in the Business Park.

WHEREAS, the Mayor and Board of Aldermen of the City of Fredericktown, Missouri, have heretofore reviewed the agreement marked Exhibit "A", attached hereto, and incorporated herein as if fully set forth; and

WHEREAS, the Mayor and Board of Aldermen of the City of Fredericktown, Missouri, deem it advisable to enter into said agreement;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF FREDERICKTOWN, MISSOURI, AS FOLLOWS:

Section 1. That the Mayor and Board of Aldermen for the City of Fredericktown, Missouri, approve the agreement marked Exhibit "A", which is attached hereto and incorporated herein as if fully set forth, between the City of Fredericktown and Seedtime and Harvest, L.L.C. for the purposes set forth hereinabove together with such changes therein as shall be approved by the officers of the City executing same which are consistent with the provisions and intent of this legislation and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. It is the belief of the Mayor and Board of Aldermen that it is in the best interest of the citizens of the City of Fredericktown, Missouri, that the City enter into said agreement.

Section 2. That the Mayor, and other appropriate City officials, are hereby authorized to execute the agreement in substantially the form as Exhibit A for and on behalf of the City of Fredericktown, Missouri and such additional documents and take any and all actions necessary, desirable, convenient or prudent in order to carry out the intent of this legislation.

Section 3. That the City Clerk of the City of Fredericktown is hereby authorized and directed to attest to the signature of the Mayor on the said agreement.

Section 4. If any section, subsection, sentence, clause or phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 5. This Ordinance shall take effect and be in force from and after its passage by the Board of Aldermen and approval according to law.

THIS ORDINANCE having been read by title only this 25th day of September, 2023, the Board of Aldermen voted as follows:

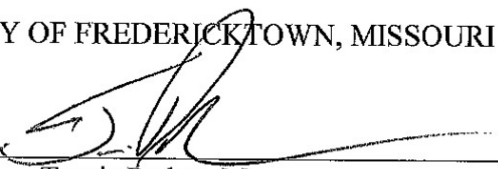
Long	<u>aye</u>	Brown	<u>aye</u>
Polete	<u>aye</u>	Miller	<u>aye</u>
Jones	<u>aye</u>	Shankle	<u>aye</u>

THIS ORDINANCE having been read by title only the second time on this 25th day of September, 2023, the Board of Aldermen voted as follows:

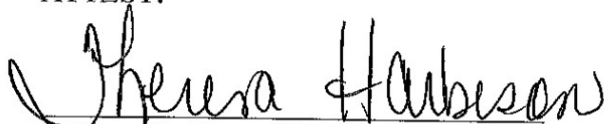
Long	<u>aye</u>	Brown	<u>aye</u>
Polete	<u>aye</u>	Miller	<u>aye</u>
Jones	<u>aye</u>	Shankle	<u>aye</u>

PASSED AND APPROVED this 25th day of September, 2023, by 6 ayes,
0 nays, 0 abstentions and 0 absentees.

CITY OF FREDERICKTOWN, MISSOURI

By: 
Travis Parker, Mayor

ATTEST:


Theresa Harbison, City Clerk

CONTRACT

THIS CONTRACT, made and entered into on this 11 day of September, 2023, (the "Effective Date"), by and between City of Fredericktown, a Fourth Class City in the County of Madison, State of Missouri, hereinafter referred to as "Seller" and Seedtime and Harvest, L.L.C., a Kentucky limited liability company authorized to do business in the State of Missouri, with its principal offices at 316 Jim Hunt Way , in the County of Bourbon, State of Kentucky, hereinafter referred to as "Buyer",

WHEREAS, Seller is the owner of the lots or parcel of real property situated in the City of Fredericktown, County of Madison, State of Missouri, more particularly described as follows:

Lot 15 of Fredericktown Business Park Phase I, in the City of Fredericktown, Madison County, Missouri, according to the plat thereof recorded in Cabinet "A", Page 304 of the Madison County Records and being subject to deeds, easements and restrictions of record.

The real property consists of approximately 2.57 acres of unimproved real property in the Fredericktown Industrial Park, Fredericktown, Missouri. The real property herein described and referred to is hereafter referred to as "Property"; and,

WHEREAS, Seller desires to bring business and industry to the Fredericktown community; and

WHEREAS, Buyer is in the business of distributing food service programs (hereinafter the "Business"); and

WHEREAS, Buyer desires to relocate and expand its current operations and requires real property with space for growth; and

WHEREAS, Seller desires to sell and Buyer desires to buy the Property for the purchase price and on the terms and conditions set forth herein. In consideration of the mutual and reciprocal promises herein set forth, the parties agree as follows:

1. **Purchase.** The Seller agrees to sell and the Buyer agrees to buy the above described Property under the terms and conditions stated herein.

2. **Purchase Price.** The purchase price for the Property shall be Twenty-Five Thousand Seven Hundred and 00/100 Dollars (\$25,700.00) (the "Purchase Price"), payable as follows:

a. Within three (3) business days of the mutual execution of this Contract by Seller and Buyer, Buyer shall deliver to Madison County Title ("Title Company") the sum of Five Thousand and 00/100 Dollars (\$5,000.00) as earnest money (the "Earnest Money Deposit") which Earnest Money Deposit shall be immediately placed in an Escrow Account. All interest, if any, earned on the Escrow Account shall belong to Seller. The Earnest Money Deposit shall be non-refundable to Buyer except for non-performance by Seller of any of their obligations under this Contract. The Earnest Money Deposit shall be applied to the Purchase Price at Closing or forfeited to Seller or returned to Buyer in conformity with this Contract.

b. Twenty Thousand Seven Hundred and 00/100 dollars (\$20,700.00) payable in cash or certified funds on the date of Closing.

c. Construction of the facility for Buyer's Fredericktown operations must begin on the Property within eighteen months of the date of Closing and be in full operation within thirty months of the date of Closing; and

d. Buyer must construct an at least 2000 sq. ft. facility to operate the Business.

e. If any of the conditions stated in the above subsections are not timely met, Buyer shall pay an additional Purchase Price sum of Twenty-five Thousand Seven Hundred and 00/100 dollars (\$25,700.00) to Seller in cash or certified funds within thirty (30) days of default.

f. The terms of this section shall survive the Closing.

3. **Commitment and Policy of Title Insurance.**

a. Within five (5) days after the date of this Contract, Buyer will order a commitment ("Commitment") for an ALTA standard form Owner's Title Insurance Policy, issued through an agent of the Title Company, describing the Property, listing Buyers as the prospective named insured and showing as the policy amount the Purchase Price for the Property. Upon its receipt, Buyer shall deliver a copy of the Commitment to Seller.

b. Buyer shall have twenty (20) days after receipt of the Commitment in which to notify Seller in writing of any objections Buyer have to any matters which are shown in the Commitment ("Title Review Period"). Those items to which Buyer do not object within the Title Review Period shall be deemed to be permitted exceptions to the status of Seller's

title ("Permitted Exceptions"). Should Buyer deliver to Seller their written objections to any title matters on the Commitment prior to expiration of the Title Review Period, Seller will notify Buyer within ten (10) days of receipt of Buyer's title objection notice as to which objections, if any, Seller will remove or cure, and Seller shall have until Closing to remove or cure all such defects or objections. If Seller is unwilling to cure such objections, it being understood that Seller is not required to cure any such objections, Buyer may, at Buyer's option, (1) terminate this Contract by written notice to Seller or (2) waive the objections not cured (in which event the same shall become "Permitted Exceptions") and proceed to Closing.

4. **Convey Title.** Seller shall convey title at the close of this transaction via Special Warranty Deed to Seedtime and Harvest, L. L. C., a Kentucky limited liability company.

5. **Closing Costs.** Seller agrees to pay the fee for the title search needed for issuance of the title commitment. Seller shall pay for the cost of preparing the Special Warranty Deed and any other documents necessary to transfer title as stated herein to Buyer. Buyer agrees to pay all recording fees with respect to the transfer of the Property. Buyer further agrees to pay the cost for the Buyer's Owner's Title Policy, The parties shall split equally any escrow charges of the Title Company and any other Closing costs.

6. **Real Estate Commission and Finder's Fee.** Seller and Buyer represents each to the other that neither has dealt with a realtor or broker and each party agrees to indemnify and hold the other harmless from and against any and all claims, liabilities, and expense (including attorney's fees) arising from a breach of this representation and for any claim for commission through such party, which indemnity shall survive the closing or earlier termination of this transaction. Further, each party represents to the other that no finder's fee is due or owing to any party.

7. **Closing.** Time is expressly declared to be of the essence of this Contract. The Contract shall be executed and completed and sale closed on or before October 30, 2023, at the offices of Title Company, at 137 W. Main Street, Fredericktown, Missouri, or such other date or location as the parties may, in writing, agree to hereafter. Notwithstanding the terms herein, Buyer may, in Buyer's sole discretion, elect a "mail away" closing for execution of its documents. Each

party shall fully perform all of its obligations hereunder at such times as to ensure closing within the period herein specified or any extension thereof.

8. **Seller's Representations and Warranties.** In order to induce Buyer to enter into this Agreement and to consummate the transactions contemplated in this Agreement, Seller hereby makes the representations and warranties set forth in this Section 8.

a. *Organization.* The Seller is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Missouri and has all requisite power and authority to own, operate and lease its properties and assets and to conduct its business.

b. *Authorization and Valid and Binding Agreement.* The execution of this Agreement and consummation of the transactions contemplated in this Agreement has obtained all necessary authorization and approval from its Board of Aldermen for the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement. This Agreement is a legal, valid and binding agreement of Seller enforceable against Seller in accordance with its terms, subject to the laws of bankruptcy, insolvency and moratorium and other laws or equitable principles generally affecting creditors' rights.

9. **Buyer's Representations and Warranties.** In order to induce Seller to enter into this Agreement and to consummate the transaction contemplated in this Agreement, Buyer makes the representations and warranties set forth below.

a. *Organization.* Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of Kentucky with full power and authority to enter into this Agreement and consummate the transactions contemplated in this Agreement. Buyer is duly qualified to do business in, and is in good standing under, the laws of each jurisdiction in which the property owned or leased by it or the nature of its business requires such qualification, except where the failure to be so qualified does not and will not have an adverse material effect on the Business.

b. *Authority and Valid and Binding Agreement.* The execution, delivery, and performance by Buyer of this Agreement and all transactions contemplated in this Agreement have been duly authorized and approved by all necessary action of Buyer

pursuant to its Operating Agreement. This Agreement, when executed and delivered by Buyer, shall be a valid and binding obligation of Buyer, enforceable against it in accordance with the terms of this Agreement, subject to the laws of bankruptcy, insolvency and moratorium and other laws or equitable principles generally affecting creditors' rights.

c. *Absence of Conflicting Agreements or Required Consents.* The execution, delivery and performance of this Agreement by Buyer do not and will not: (i) conflict with or violate any law, rule, regulation, order, judgment or decree applicable to Buyer or by which Buyer is bound or affected, (ii) result in any breach of or constitute a default under any contract or other agreement or note, bond, mortgage, indenture, lease, license, franchise or other instrument or obligation to which Buyer is a party, or (iii) require any consent, approval, authorization or permit of, or filing with or notification to, any governmental or regulatory authority, domestic or foreign, or any person or entity not a party to this Agreement.

10. **Default by Buyer.** If Buyer fails or refuses to comply with the conditions assumed by them or to perform all their obligations hereunder, Seller may, terminate this Contract and be entitled to retain the Earnest Money Deposit as liquidated damages, in addition to Seller's actual out of pocket costs associated with this transaction.

11. **Default by Seller.** If Seller refuses or fails to perform their obligations hereunder, including the furnishing of good title as herein defined and transfer of possession, Buyer may either:

a. Rescind the Contract and recover all deposits and other amounts paid by Buyer hereunder, and all expenses paid or incurred by them; or

b. Pursue any remedy available to Buyer, in law or equity, including an action to compel specific performance of this Contract, or one for damages for breach, separately or alternatively.

12. **No Assignment.** Buyer shall not assign this Contract or any interest hereunder or in the Property herein described, prior to full execution of the Contract, unless Seller first consents to such assignment, in writing, which consent shall not be unreasonably withheld, conditioned or delayed. Any attempted assignment in violation of this provision shall be void and of no effect with respect to Seller.

13. **Binding Effect.** This Contract shall be binding upon the parties hereto, their heirs, personal representatives and assigns. The terms and conditions of this Contract shall constitute the complete agreement between Seller and Buyer and there are no other agreements, undertakings, guarantees or warranties whatsoever, express or implied, except as contained herein. All amendments to this Contract shall be in writing and executed by the parties.

14. **Attorneys' Fees.** In the event either party fails to perform any of its obligations under this Contract or in the event a dispute arises concerning the meaning or interpretation of any provisions of this Contract, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including without limitation, court costs and reasonable attorneys' fees.

15. **No Financial Interest.** No salaried officer or employee of the City of Fredericktown and no member of the Board of Aldermen shall have a financial interest, direct or indirect, in this contract. A violation of this provision renders the contract void. Any federal regulation and applicable provisions in Section 105.450 et seq. RSMo. shall not be violated.

16. **Counterpart Execution.** This Contract may be executed in several counterparts, including execution by facsimile counterparts, each of which shall be deemed an original but all of which counterparts collectively shall constitute one instrument representing the agreement among the parties.

17. **Invalid Provisions.** If any one or more of the provisions of this Contract, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Contract and all other applications of any such provision shall not be affected by such modification.

18. **Binding Effect.** This Contract shall be binding upon and inure to the benefit of Seller and Buyer, and their respective heirs, personal representatives, successors and assigns. Except as expressly provided herein, nothing in this Contract is intended to confer on any person, other than the Parties hereto and their respective heirs, personal representatives, successors and assigns, any rights or remedies under or by reason of this Contract.

19. **Further Acts.** In addition to the acts recited in this Contract performed by Sellers and Buyers, Sellers and Buyers agree to perform or cause to be performed at the Closing or after the Closing any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby.

20. **Date of Contract.** The date of this Contract shall be, for all purposes, the date of the signature of the last party to sign this Contract.

21. **Time of the Essence.** Time is of the essence with this transaction.

22. **Closing Survival.** The terms and conditions of this Contract shall survive the Closing for a period of six (6) months.

23. **Investigation Period.** Buyer will be entitled to a period commencing on the Effective Date and expiring on the sixtieth (60th) day following the Effective Date (the "Investigation Period"), during which time Buyer may investigate and inspect the Property for its physical condition, including environmental hazards, to determine the availability of adequate utility service, and to determine the current zoning of the Property and its suitability for Buyer's intended use. The investigation may include a Phase I and/or Phase II, including testing of the soil, groundwater, surface water and any improvements on the Property and may include the drilling of one or more core test holes and soil samples. If, on or before the expiration of the Investigation Period, Buyer shall, for any reason whatsoever, in Buyer's sole and absolute discretion, disapprove or shall be dissatisfied with any aspect of the Property, then Buyer shall be entitled to terminate this Contract by giving written notice thereof to Seller whereupon this Contract shall be of no further force and effect and Buyer shall be entitled to a return of the Earnest Money Deposit.

24. **Availability of Documents.** Seller shall, within three (3) business days of the Effective Date, make available to Buyer copies of any environmental reports (Phase I and/or Phase II), surveys, title commitments or policies along with supporting documents related to the Property.

STATE OF KENTUCKY)
) SS.
COUNTY OF Bourbon)

On this 11th day of SEPTEMBER, 2023, before me, a Notary Public in and for said state, personally appeared ERIN H. FERGLISON,
 personally known to me
_____ proved to me through identification documents, which were _____

_____ to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as a Member of Seedtime and Harvest, L. L. C., a limited liability company of the State of Kentucky, in behalf of said limited liability company by authority of its Members in accordance with its Operating Agreement.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year first above written.

Joyce Fields Shew

STATE AT LARGE, Notary Public
State of KENTUCKY
County of Bourbon
Commission No. KYNP 75613
My term expires: 7/29/2029

