

COPY

**AGREEMENT FOR PURCHASE AND SALE
OF REAL PROPERTY, AND FOR A TEMPORARY CONSTRUCTION EASEMENT**

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (the "Agreement") is made and entered into on December 1, 2004, by and between **R. FRANKLIN HARDY** (the "Seller") and the **CITY OF CHARLOTTESVILLE, VIRGINIA** (the "City") and the **COUNTY OF ALBEMARLE, VIRGINIA** (the "County"), both political subdivisions of the Commonwealth of Virginia (together, the "Purchaser"). The date upon which Seller and Purchaser have both fully executed this Agreement shall be the "Effective Date" of this Agreement.

WITNESSETH:

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller hereby agree as follows:

1. Purchase and Sale. Seller hereby agrees to sell to Purchaser and Purchaser hereby agrees to purchase from Seller, for the Consideration (as defined below) and upon the terms and conditions specified herein, the property more particularly described as that certain parcel of land, with improvements thereon and appurtenances thereto belonging, designated as "*Parcel A*" on the attached Plat by John McNair and Associates dated July 30, 2004, said property containing 2,640 square feet of land and being a portion of Parcel 34 on City Real Property Tax Map 53, said larger parcel being in all respects the same property conveyed to Seller herein by deed of R. Franklin Hardy and Hay L. Hardy dated August 25, 2004 and of record in the Clerk's Office of the Circuit Court of the City of Charlottesville in Deed Book 999, page 472, including any right, title and interest of Seller in and to adjacent roads, alleys and rights-of-way thereto and all improvements located thereon (collectively, the "Property").

2. Temporary Construction Easement. Seller hereby agrees to grant to Purchaser a temporary construction easement across the rear of Seller's property at 417-419 Park Street, for use during the construction of a temporary access road connecting Old Fifth Street, S.W., and the existing alley running south from Hedge Street, and for the reconstruction of an existing retaining wall on the property located at 421 Park Street. Purchaser shall, at its expense, cause a recordable plat to be prepared showing the specific boundaries of the temporary construction easement. Purchaser further agrees that it will (i) replace any ground cover disturbed as a result of the construction; (ii) reinstall or replace the existing white picket fence in the same location; (iii) provide replacement landscaping for any trees or shrubs removed as a result of the construction; and (iv) be responsible for the repair of any damage to Seller's property resulting from the construction. The replacement landscaping will be subject to the prior approval of the Seller.

2. Conveyance in lieu of Condemnation. This Agreement and the conveyance of the Property are not undertaken voluntarily by the Seller, in that Purchaser has asserted a necessity to acquire the Property for a public use, specifically for use as a Juvenile and Domestic Relations District Court facility, and the City Council of the City of Charlottesville has passed a Resolution dated August 2, 2004 authorizing the acquisition of the Property by eminent domain. In order to save the time, expense and uncertainty of litigation the parties hereto have negotiated this Agreement, in lieu of formal condemnation proceedings.

3. Purchase Price and Earnest Money. The Consideration for the Property shall be as follows:

- (A) Purchaser shall provide Seller with fifteen (15) permanent reserved parking spaces in the new Juvenile and Domestic Relations District Court parking garage to be constructed immediately adjacent to the Property subject to this Agreement. The conveyance of the replacement parking spaces to Seller shall be by irrevocable license or such other form as may be acceptable to Seller and Seller's attorney. The fifteen permanent replacement parking spaces shall be for the benefit of Seller's property located at 417-419 Park Street (Parcel 34 on City Real Property Tax Map 53), and all right, title and interest that Seller acquires in said spaces shall be transferable with title to or use of 417-419 Park Street. Purchaser shall also grant to Seller a permanent right of ingress and egress from High Street to the parking garage for the purpose of accessing the parking spaces. Prior to use of the spaces Seller shall designate on the second or third floor of the garage which fifteen spaces shall be reserved for his exclusive use, and Purchaser shall mark the spaces accordingly.
- (B) Between the date of the execution of this Agreement and the date on which the fifteen permanent replacement parking spaces in the new garage are ready for occupancy, Purchaser shall provide Seller with fifteen temporary replacement parking spaces. Said fifteen temporary replacement spaces shall be provided by (i) reimbursing Seller for the monthly rental for parking spaces located at 421 Park Street (currently \$85.00 per space per month) for such time as those spaces are available for lease; and (ii) providing monthly parking passes for use at the Market Street Parking Garage, at no cost to Seller; provided, however, that parking spaces in the Market Street Parking Garage shall only be used as part of the fifteen temporary replacement parking spaces to the extent that space is not available at 421 Park Street, or at such other location mutually agreeable to Seller and Purchaser.
- (C) Purchaser shall reimburse Seller for all fees charged by the law firm of Haugh and Haugh, P.C., for their representation of Seller in this matter through closing, based on the standard hourly rate charged by Charles R. Haugh, Esq.

4. Written Materials Relative to Property. Upon request by Purchaser, Seller shall provide to Purchaser at the office of Purchaser's attorney within seven (7) business days of the Effective Date for inspection and copying any and all contracts, written reports, studies (including, without limitation environmental tests and studies), site plans, analyses and other written information and materials relative to the Property and in the possession of Seller, including, but not limited to a written statement to be prepared by Seller concerning any oral agreements with any party involving or relating to the Property, and any inspection reports regarding the property.

5. Seller's Warranties, Covenants and Representations. In addition to any other representations and warranties contained in this Agreement, Seller represents and warrants to Purchaser the following representations and warranties as of the date hereof and Seller acknowledges and agrees that Purchaser is relying upon such representations and warranties in purchasing the Property and that same are true and correct:

(a) Seller has good, marketable and insurable fee simple title to the Property, free and clear of all liens, encumbrances and other exceptions to title, except for those matters of record.

(b) Seller has full right, title and authority to execute this Agreement, to make the representations and warranties set forth in this Agreement, to perform the covenants of Seller hereunder and to deliver any and all documents required to consummate the transactions contemplated herein. Each party signing on behalf of an entity has the express authority to sign on behalf of said entity, and such signature is binding upon the entity.

(c) Seller has no knowledge that any suits or proceedings are pending or, to the best of Seller's knowledge, threatened against or relating to the Property, or which could make unlawful the consummation of the transactions contemplated by this Agreement or render Seller unable to consummate the same. There is no outstanding order, writ, injunction or decree of any court or governmental agency affecting the Property.

(d) There are no adverse or other parties in possession of the Property, or any part thereof, and no party has been granted any license, lease or other right relating to the use, occupancy or possession of the Property, or any part thereof, other than easements, agreements, leases, licenses and matters appearing of record, and those matters disclosed by Seller in writing prior to the Effective Date. There are no encroachments upon the Property that materially adversely affect enjoyment of the Property by Purchaser for its intended use, and to the best of the Seller's knowledge, information and belief, the improvements on the Property do not encroach upon adjoining properties.

(e) Seller has not received notices, written or otherwise, from any governmental or quasi-governmental agency requiring the correction of any condition with respect to the Property, or any part thereof, by reason of a violation of any regulation, ordinance, or law imposed by such governmental authority relating to the zoning and the current use or condition of the Property.

(f) To the best of Seller's knowledge: (i) none of the Property has been excavated (except for standard grading related to site development) by the Seller, at the Seller's request, or by any tenant or other person using or occupying the Property with Seller's permission; (ii) no hazardous materials, toxic chemicals, or similar substances, as defined by 42 U.S.C. §1251 et seq., or 42 U.S.C. §6901 et seq., or 42 U.S.C. §9601 et seq., or 33 U.S.C. §1317(1), or 15 U.S.C. §2606(f), or 49 U.S.C. §1801 et seq., or regulations adopted pursuant thereto, or any similar provision of any applicable federal or state law (collectively, "Hazardous Materials") are or were stored or used on or under, or otherwise were or are in existence, or were in any way dealt with on or under the Property; and (iii) no owner or occupant of the Property has received any notice from any governmental agency with regard to such Hazardous Materials.

(g) Seller represents and warrants to Purchaser that all contractors, sub-contractors, laborers, materialmen or other parties rendering services to improve or benefit the Property upon the order or authorization of the Seller, Seller's agent, or Seller's tenant(s) (other

than the Purchaser) have been or will be paid in full by Seller prior to Closing, and Seller shall deliver to Purchaser at Closing final lien waivers and/or releases of liens from all such parties.

6. Conditions Precedent (Contingencies) to The Obligations of Purchaser to Settle.

(a) **Title.** Title to the Property shall be insurable by a recognized title company of the Purchaser's choice, at standard rates, and without exception other than (i) the standard printed Exclusions from Coverage contained in the Title Binder, (ii) the lien of real property taxes on the Property for the current year not yet due and payable, (iii) such other encumbrances, easements, restrictions and exceptions (including, without limitation, survey matters) acceptable to Purchaser in Purchaser's sole discretion which do not individually or in the aggregate render title unmarketable or adversely affect the use of the Property for Purchaser's intended use(s) (collectively, the "Permitted Exceptions") and (iv) matters to be paid or released by Seller at Closing. If a title search done by Purchaser or title insurance commitment obtained by Purchaser reveals any title matters not constituting Permitted Exceptions which are not acceptable to Purchaser, Purchaser will promptly notify Sellers of such title objections in writing and thereafter Sellers shall have a period of ten (10) days to notify Purchaser in writing whether or not Seller elect to cure any such title objections. If Sellers elect to cure the title objections, Seller shall have a reasonable time to cure such objections, but in no event later than thirty (30) days prior to the Closing Date (as defined below) or as otherwise may be agreed upon by Seller and Purchaser. If Seller elects not to cure the title objections or fails to notify Purchaser within the required ten (10) day period whether or not Sellers elect to cure such title objections, Purchaser shall have the right within ten (10) days to either: terminate this Agreement (in which event this Agreement shall then be deemed null and void, none of the parties hereto shall then have any further obligation to any other party hereto or to any third party; or to waive the title objections and proceed to Closing as set forth in this Agreement.

7. Closing. The closing of the sale of the Property to Purchaser (the "Closing") shall occur on December 8, 2004, or as soon thereafter as practicable (the "Closing Date"). Time is of the essence as to the Closing Date. The Closing shall be at Seller's attorney's office or another location mutually agreeable to Seller and Purchaser. At Closing, Seller shall deliver to Purchaser the following items:

(a) Deed. A validly executed General Warranty Deed with English Covenants of Title, in recordable form, conveying marketable fee simple title to the Property, free and clear of all conditions, restrictions, liens, encumbrances, agreements and other title matters except the Permitted Exceptions (the "Deed");

(b) Lien Affidavit. An affidavit (the "Lien Affidavit") executed by Seller in form and substance acceptable to the Title Company certifying that the Property is free from claims for mechanics' and materialmen's liens, as well as the rights or claims of any parties in possession, except any such claims or rights arising as a result of Purchaser's occupancy of the Property pursuant to its Lease. Furthermore, Seller agrees to execute and deliver at Settlement such additional documents or indemnities as may be required by Purchaser's title insurance company in order to

delete from a title insurance policy all standard exceptions for unfiled mechanic's materialmen's or similar liens (other than exceptions approved by Purchaser related to the Leases);

(c) FIRPTA Certificate. A certificate executed by Seller as to income tax status and matters related to Section 1445 of the Internal Revenue Code, ("IRC") or other evidence satisfactory that Seller has complied with IRC Section 1445, including establishment of escrow until the withholding requirements of IRC Section 1445 have been met. Purchaser agrees to reasonably co-operate with Seller on such compliance provided that Purchaser does not incur any added expense in so doing;

(d) Form 1099 Certificate. A certificate executed by Seller as to the reporting of certain real estate transactions required by IRC Section 6045(e);

(e) Assignment of Leases and Contract Rights. An assignment executed by Seller of all of Seller's interest in any Leases and any contracts directly related to the Property (as may be then in existence);

(g) Certificate of Seller's Representations and Warranties. A certificate executed by Seller in affidavit form, satisfactory to Purchaser, dated as of the Closing Date, which provides that all of Seller's representations and warranties set forth in this Agreement are true and correct as of the time of Closing; and

(h) Other Closing Documents. Any other reasonable documentation which may be required by a Title Company in order to issue a Title Policy to Purchaser at Closing.

8. Expenses and Prorations. Except for Purchaser's payment of Seller's attorney's fees as provided in Section 3 (C), supra, each party shall pay its own expenses with regard to the negotiation, preparation, execution and performance of this Agreement. Purchaser agrees to pay the expense of preparing the deed, and Seller agrees to pay the grantor's deed tax. Except as otherwise agreed herein, all other expenses incurred in connection with this sale, including without limitation title examination, obtaining a Title Binder, insurance premiums, survey costs, recording costs and the fees of Purchaser's attorneys, shall be borne by Purchaser. All rents, taxes, and assessments related to the Real Property shall be prorated as of the date of Closing.

9. Possession. Possession of the Property shall be given to Purchaser at the Closing.

10. Risk of Loss. All risk of loss or damage to the Property by fire, windstorm, casualty, or other cause not directly attributable to the acts or omissions of Purchaser is assumed by Seller until Closing. In the event of any such loss or damage, Seller shall, at their option, either repair the damage at its expense or assign to Purchaser all of Seller's rights under any policy or policies of insurance applicable to the Property and pay to Purchaser the amount of any deductible applicable to such policy. Seller shall maintain casualty insurance with replacement cost coverage in effect with respect to the Property until Closing.

12. Notices. Any notice required or permitted by this Agreement shall be given by certified mail, return receipt requested, and, unless otherwise provided for herein, shall be deemed

given as of the date postmarked in the United States mail to the following addresses or at such other addresses as are specified by written notice delivered in accordance herewith.

To Seller: Frank Hardy
417 Park Street
Charlottesville, VA 22902

With a copy to:

Charles R. Haugh, Esq.
435 Park Street
Charlottesville, VA 22902

To Purchaser: City of Charlottesville, Virginia
City Hall, 601 East Market Street
P.O. Box 911
Charlottesville, VA 22902
Attn: Gary O'Connell, City Manager

and

County of Albemarle, Virginia
County Office Building
401 McIntire Road
Charlottesville, VA 22902
Attn: Robert W. Tucker, Jr., County Executive

With a copy to:

S. Craig Brown, Charlottesville City Attorney
City Hall, 601 East Market Street
P.O. Box 911
Charlottesville, VA 22902

and

Larry W. Davis, Albemarle County Attorney
County Office Building
401 McIntire Road
Charlottesville, VA 22902

13. Section 1031 Exchange. Purchaser acknowledges that the Seller may request that the transaction contemplated herein be used in connection with a like-kind property exchange under IRC Section 1031 (and the regulations promulgated thereunder) and the non-exchanging party agrees to provide upon request reasonable cooperation to facilitate such exchange by the

exchanging party at no additional cost or expense to the non-exchanging party for such cooperation.

14. Property Condition. Between the Effective Date and the Closing Date Seller represent and warrant that they shall:

(a) not commit, or suffer any other person to commit, any waste or damage to the property, or any appurtenances thereto, and shall keep and maintain the Property in as good condition and repair as it existed on the Effective Date, ordinary wear and tear excepted;

(b) not enter into any agreements, instruments or documents or otherwise take any action which would adversely affect the state of title to the Property;

(c) promptly furnish to Purchaser copies of any and all notices that Seller receives (or which have been received by Seller in the past) with respect to the existence of any default, violation or delinquency regarding the use, occupancy or physical condition of the Property;

(d) not take any action that would encumber the Property after Closing with any lease, lien, covenant, condition or restriction;

(e) not seek any zoning change or other governmental approval with respect to the Property; and shall

(f) not grant any written lease or other agreement to any third party, for any purpose, relating to any portion of the Property.

15. Default. If the event either the Seller or the Purchaser shall fail to make full settlement, for reason other than provided for at its option elsewhere in this Agreement, and the other party has not defaulted hereunder, the party that is willing and able to make full settlement shall have all remedies available to it at law or in equity, including the right to specific performance, which remedies shall be cumulative. No delay by either party in pursuing any remedy or taking any action shall be construed as a waiver of any breach by the other party.

16. Brokers. Purchaser and Seller represent and warrant to the other that they have dealt with no broker, agent or similar person in connection with the transactions contemplated by this Agreement. Neither party shall have any liability to the other, or to any third party, for any commission owed to any broker, agent or similar person.

17. Miscellaneous. This Agreement and the Exhibits attached hereto and made a part hereof set forth the entire agreement and understanding of the parties with respect to the purchase and sale of the Property (whether prior or contemporaneous, written or oral). This Agreement shall not be modified except in a writing signed by the parties hereto. No waiver of any provision of this Agreement shall be valid unless the same is in writing and is signed by the party against which it is to be enforced. This Agreement, together with any attachments hereto, and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, legal representatives, successors and, if permitted, assigns wherever the context so requires or

admits. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

18. Counterpart Originals. This Agreement may be executed in multiple original counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement, and a signature by facsimile shall be deemed an original for all purposes.

19. Assignability. This Agreement may not be assigned by either Seller or Purchaser without the written consent of the other.

20. Survivability. All agreements, representations, covenants and warranties on the part of Seller and Purchaser contained in this Agreement or any amendment or supplement hereto shall survive Closing, and delivery of the Deed and the other Closing documents.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written by their duly authorized representatives.

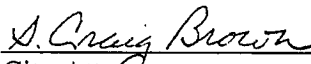
SELLER:

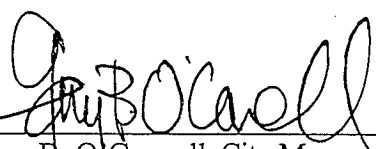

R. FRANKLIN HARDY

PURCHASER:

APPROVED AS TO FORM:

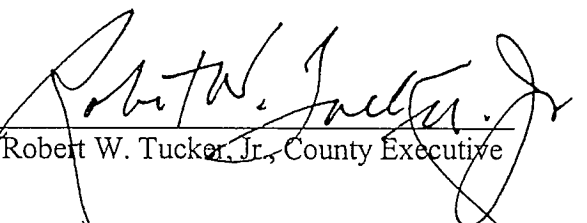
THE CITY OF CHARLOTTESVILLE, VIRGINIA

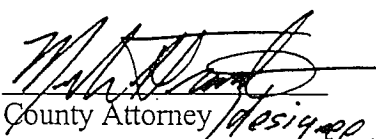
By: 
City Attorney

By: 
Gary B. O'Connell, City Manager

THE COUNTY OF ALBEMARLE, VIRGINIA

APPROVED AS TO FORM:

By: 
Robert W. Tucker, Jr., County Executive

By: 
County Attorney Designee