

Prepared by S. Craig Brown  
City Attorney  
605 East Main Street  
Charlottesville, VA 22902  
TMP: 34-53

### **IRREVOCABLE LICENSE AND USE AGREEMENT**

THIS IRREVOCABLE LICENSE AND USE AGREEMENT is made this \_\_\_\_ day of June, 2011 by and between the COUNTY OF ALBEMARLE, VIRGINIA, a political subdivision of the Commonwealth of Virginia, Grantor or County herein, whose address is 401 McIntire Road, Charlottesville, VA 22902, and R. FRANKLIN HARDY, Grantee herein, whose address is 417 – 419 Park Street, Charlottesville, VA 22902. The CITY OF CHARLOTTESVILLE, VIRGINIA, a political subdivision of the Commonwealth of Virginia, (City herein) joins in this Agreement for the purpose of evidencing its consent to the grant of an irrevocable license by Grantor to Grantee.

WHEREAS, by agreement dated December 1, 2004 Grantee agreed to convey to the County of Albemarle and the City of Charlottesville a portion of the real property identified as Parcel 34 on City of Charlottesville Real Property Tax Map 53; and,

WHEREAS, said real property was conveyed by Grantee to the County and the City by deed dated July 18, 2005, recorded in the Clerk's Office of the Circuit Court for the City of Charlottesville in Deed Book 1041, Page 666; and,

WHEREAS, the December 1, 2004 agreement provided that in consideration of the Grantee's conveyance of real property the County and the City would provide Grantee, by irrevocable license or such other form as may be acceptable to Grantee

herein, with fifteen (15) reserved parking spaces in a new parking garage to be constructed as a part of the Juvenile and Domestic Relations District Court improvement project, with a right of ingress and egress from High Street to the parking garage for the purpose of accessing the parking spaces; and,

WHEREAS, the December 1, 2004 agreement was unanimously approved by the Charlottesville City Council by Resolution adopted on December 6, 2004, and by the Albemarle County Board of Supervisors by Resolution adopted December 8, 2004; and,

WHEREAS, the County and the City have caused the parking garage to be constructed, and have allocated the parking spaces within the garage between the two jurisdictions for certain specific purposes; and,

WHEREAS, for the sole purpose of this Agreement the fifteen spaces within the garage to be reserved for the Grantee have been allocated to the County, so that the County may act as Grantor pursuant to this Agreement; and,

WHEREAS, the Grantee has designated the fifteen (15) spaces within the garage that will be reserved for his use, as required by the December 1, 2004 agreement.

NOW, THEREFORE, in consideration of the sum of TEN and 00/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the City, the County and the Grantee do hereby agree as follows:

(1) Irrevocable License.

The County of Albemarle, as Grantor, does hereby GRANT, BARGAIN and CONVEY, with the consent and approval of the City of Charlottesville, unto the Grantee, and his successors and assigns (referred to collectively as “the Grantee”) the County’s interest in the following:

A. An irrevocable license for fifteen designated parking spaces within the Juvenile and Domestic Relations District Court parking garage. The fifteen specific spaces subject to this License are designated on the two sheets attached as Exhibit 1, labeled “J&DR Parking Plan”. The location of these fifteen spaces shall not be changed without the prior written approval of the City, the County and the Grantee. The City shall cause these spaces to be initially signed or marked as reserved for Grantee’s use. This License shall commence when the parking garage first opens for occupancy.

B. A right of ingress and egress from High Street to the parking garage for the purpose of accessing the Grantee’s parking spaces, with unrestricted access into and out of the parking garage. Such right of ingress, egress and access shall be subject to any restrictions, including the temporary closing of the garage or adjoining streets, required by governmental authority as necessary for public safety, but otherwise the right of ingress, egress and access shall be unrestricted.

(2) Grantee’s Use of Parking Spaces

The fifteen spaces subject to the License granted herein shall be for the benefit of Grantee’s property located at 417 – 419 Park Street, and shall be used for the parking of motor vehicles by the Grantee and the Grantee’s employees, agents, clients, invitees to and tenants of 417 – 419 Park Street, and shall be used for no other purpose. Grantee covenants and agrees that he will not allow, permit, authorize or direct his employees, agents, clients, invitees or tenants to park in any spaces in the parking garage other than those designated for Grantee’s use pursuant to this License. The enforcement of this License and Use Agreement against any unauthorized users of the licensed parking spaces shall be the responsibility of the Grantee.

(3) Transfer of License

This Irrevocable License Agreement shall be assignable or transferable with title to or use of 417 – 419 Park Street, but shall not be sold, conveyed or transferred separate or apart from the conveyance of the property at 417 – 419 Park Street. Grantee shall give prompt written notice to the City and the County of any transfer or sale of the property at 417 – 419 Park Street.

(4) Indemnity

A. Grantee shall indemnify, protect, defend and hold harmless the City of Charlottesville and the County of Albemarle and its officers, employees and agents for, from and against all liabilities, claims, fines, penalties, costs, death of or personal injuries to persons, damages to property (including property located within the parking garage with Grantee's consent or permission), losses, liens, causes of action, suits, and judgments (including court costs and reasonable attorneys' fees) of any nature, kind or description, directly or indirectly arising out of, caused by, or resulting from, in whole or in part, any act, omission, negligence or willful misconduct of Grantee or of any individual exercising any rights granted to Grantee by this License and Use Agreement; provided that Grantee's duty to indemnify, protect, defend and hold harmless pursuant to this paragraph shall not apply to any act, omission, negligence or willful misconduct of any City or County officer, employee or agent acting within the scope of his or her employment.

B. Neither the City of Charlottesville nor the County of Albemarle shall be responsible for and Grantee hereby waives all claims against the City of Charlottesville and the County of Albemarle and, when acting within the scope of their employment,

their officers, employees and agents arising or alleged to arise from theft of or damage to any vehicles occupying the parking improvements or the contents of such vehicles.

(5) Insurance

Grantee at all times while this Agreement is in effect shall, at his own expense, keep in full force and effect (a) workers' compensation insurance (to the extent required by state law); and (b) general commercial liability insurance in such coverages and amounts as determined by the Grantee. The City of Charlottesville and the County of Albemarle shall be named as additional insureds on the commercial liability insurance policy to the extent of their interests in the parking garage, and the policy shall also include a waiver of subrogation in favor of the City and County and provide that the Grantee's coverage shall be primary and non-contributory from the Owner.

(6) Garage Alterations and Improvements

A. The City and the County, as owners of the garage, retain the right, but not the obligation, to make such repairs, alterations, additions, changes or improvements, whether structural or otherwise, and to otherwise alter or modify the improvements in or about the Juvenile and Domestic Relations District Court parking garage as they deem necessary, and during the continuance of any such work to take such measures for safety or for the expediting of such work as may be required, in the City and County's judgment; provided that the Grantee's Licensed parking spaces shall not be altered, relocated, removed or replaced without the prior written consent of the Grantee. Grantee shall be responsible for the routine maintenance and routine repair of his fifteen designated parking spaces as the Grantee may deem necessary, but the Grantee shall not

be responsible for major repairs or alterations, including but not limited to structural repairs.

B. The City and the County further retain the right to establish and amend from time to time reasonable and uniform rules and regulations governing the use of and parking within the parking garage, provided that such rules and regulations will not limit or adversely affect Grantee's rights of access, ingress and egress as provided herein, or Grantee's use of his designated parking spaces.

C. The City and the County further retain the right, but not the obligation, to take all such reasonable measures as they may deem advisable for the security of the parking garage and its occupants; provided, however, that such measures shall not interfere with the Grantee's unrestricted access to the parking garage; and provided further that neither the City nor the County shall have any liability to the Grantee, or anyone exercising rights pursuant to this License and Use Agreement, for loss of property or personal injury alleged to result from the lack of security measures in the parking garage. Grantee shall cooperate in the efforts of the City and County to maintain security in the parking garage and shall follow all rules and regulations reasonably promulgated by the City and the County with respect thereto; provided that such rules and regulations shall not interfere with the Grantee's unrestricted access to and use of the parking garage.

D. The City and the County shall use all reasonable efforts to minimize the interference to Grantee, and to those authorized to use the licenses parking spaces, resulting from the exercise of rights reserved pursuant to Sections 6 (A), (B) and (C), *supra*.

(7) Liens and Encumbrances

Grantee covenants and agrees that fee simple title and ownership of the entire parking garage, including the parking spaces licensed pursuant to this Agreement, will remain in the City and County. Grantee further covenants and agrees that its interest in the fifteen parking spaces licensed and used pursuant to this Agreement shall not be used as security for any loan, mortgage or encumbrance of any nature, or be made subject to any lien or deed of trust of any nature.

(8) County as Grantor

By acting as Grantor of the irrevocable license the County of Albemarle assumes no additional duties, responsibilities or liabilities beyond those which may arise as a result of its joint ownership of the parking garage with the City of Charlottesville.

(9) Warranties of the City and County

The County and the City warrant that the County has full and complete authority to grant this license; that both jurisdictions have full and complete authority to enter into this agreement; and that no entity other than the Grantee has any known claim to any of the rights hereby granted to him, except for rights of ingress, egress and access held in common with other users of the parking garage.

(10) Loss of Use of Parking Garage

In the event the Juvenile Court parking garage ceases to exist or ceases to be used for vehicle parking for whatever reason, including acts of force majeure, the parties intend that the property conveyed by the Grantee to the City and County by the aforementioned deed be re-conveyed to the Grantee, his successor(s) and / or assign(s). However, all parties expressly acknowledge that neither the City nor the County may dispose of its interest in such property unless and until approved by the local governing

body following a public hearing, as required by Virginia Code Section 15.2-1800(B) . If such a reconveyance is not authorized, then the Grantee and designees of the City and the County will jointly employ a qualified and impartial professional real estate appraiser to determine the then current fair market value of the property that was conveyed by Grantee to the City and County by deed dated July 18, 2005. Such appraisal shall consider the zoning and land use regulations applicable to the property at the time of the appraisal, and shall appraise the property as if it were an improved privately-owned surface parking lot which is available for use by the occupants of 417—419 Park Street. Within sixty (60) days from the completion of the appraisal the City and County may appropriate and pay the appraised amount to the Grantee, and this Agreement shall thereafter be void and of no effect.

(11) Force Majeure

Neither party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of their respective obligations hereunder to the extent that such delay or failure is due solely to circumstances beyond the reasonable control of the party experiencing such delay or failure, including but not limited to acts of God, unusually severe weather conditions, fire, floods, earthquakes, accidents, riots, acts of terrorism, and governmental regulations or orders.

(12) Entire Agreement

This Irrevocable License and Use Agreement, including any exhibits which may be attached hereto, contains the entire agreement between the parties with respect to the subject matter hereof. Any agreement made hereafter between the parties shall be

ineffective to modify, release, or otherwise affect this Agreement, in whole or in part, unless such agreement is in writing and signed by all parties.

(13) Severability

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions (including the unaffected portion of the invalid or unenforceable provision) of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

EXECUTED as of the date hereinabove first set forth.

**GRANTOR:**

**COUNTY OF ALBEMARLE, VIRGINIA**

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF VIRGINIA

CITY OF CHARLOTTESVILLE, to-wit:

The foregoing instrument was acknowledged before me in the City of Charlottesville, Virginia, this \_\_\_\_ day of April, 2012, by \_\_\_\_\_ for the County of Albemarle, Virginia.

\_\_\_\_\_  
Notary Public

Notary Registration No. \_\_\_\_\_

My commission expires: \_\_\_\_\_

**GRANTEE:**

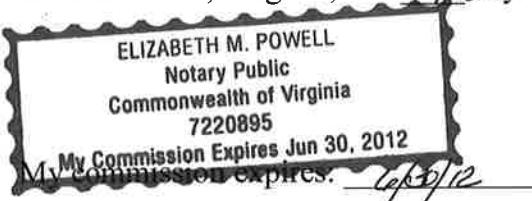
**R. FRANKLIN HARDY**

By: \_\_\_\_\_

: STATE OF VIRGINIA

CITY OF CHARLOTTESVILLE, to-wit:

The foregoing instrument was acknowledged before me in the City of Charlottesville, Virginia, this 19th day of April, 2012, by R. Franklin Hardy.



\_\_\_\_\_  
Notary Public  
Notary Registration No. 7220895

As evidenced by the signature of its City Manager below, the City of Charlottesville hereby approves and agrees to the terms and conditions of this Irrevocable License and Use Agreement.

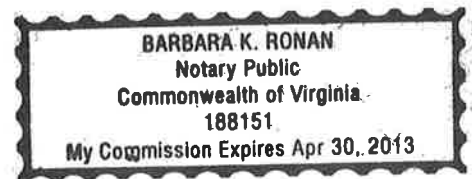
**CITY OF CHARLOTTESVILLE, VIRGINIA**

By: \_\_\_\_\_

Title: City Manager

STATE OF VIRGINIA

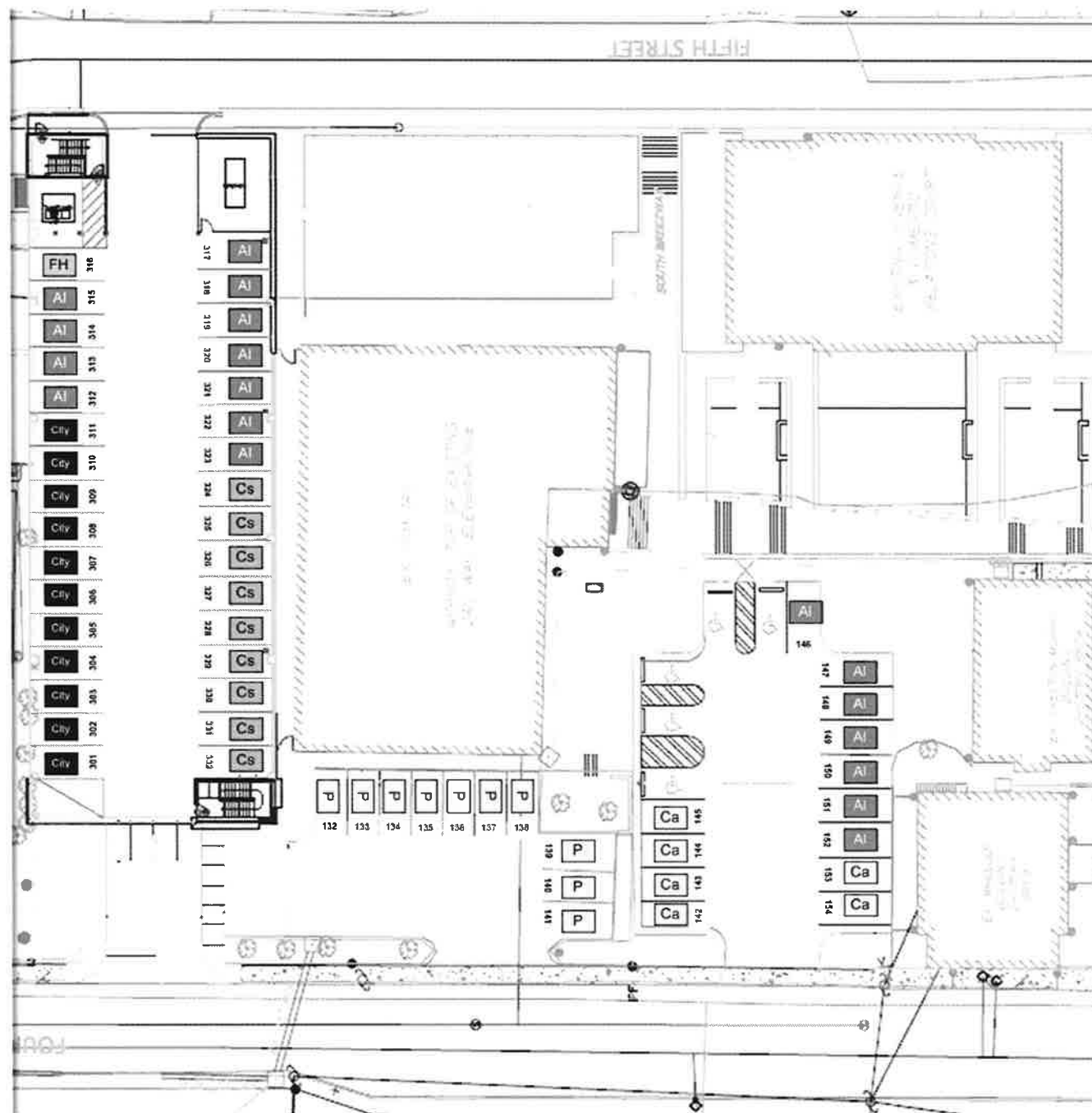
CITY OF CHARLOTTESVILLE, to-wit:



The foregoing instrument was acknowledged before me in the City of Charlottesville, Virginia, this 9th day of ~~April~~ MAY, 2012, by MAURICE JONES for the City of Charlottesville, Virginia.

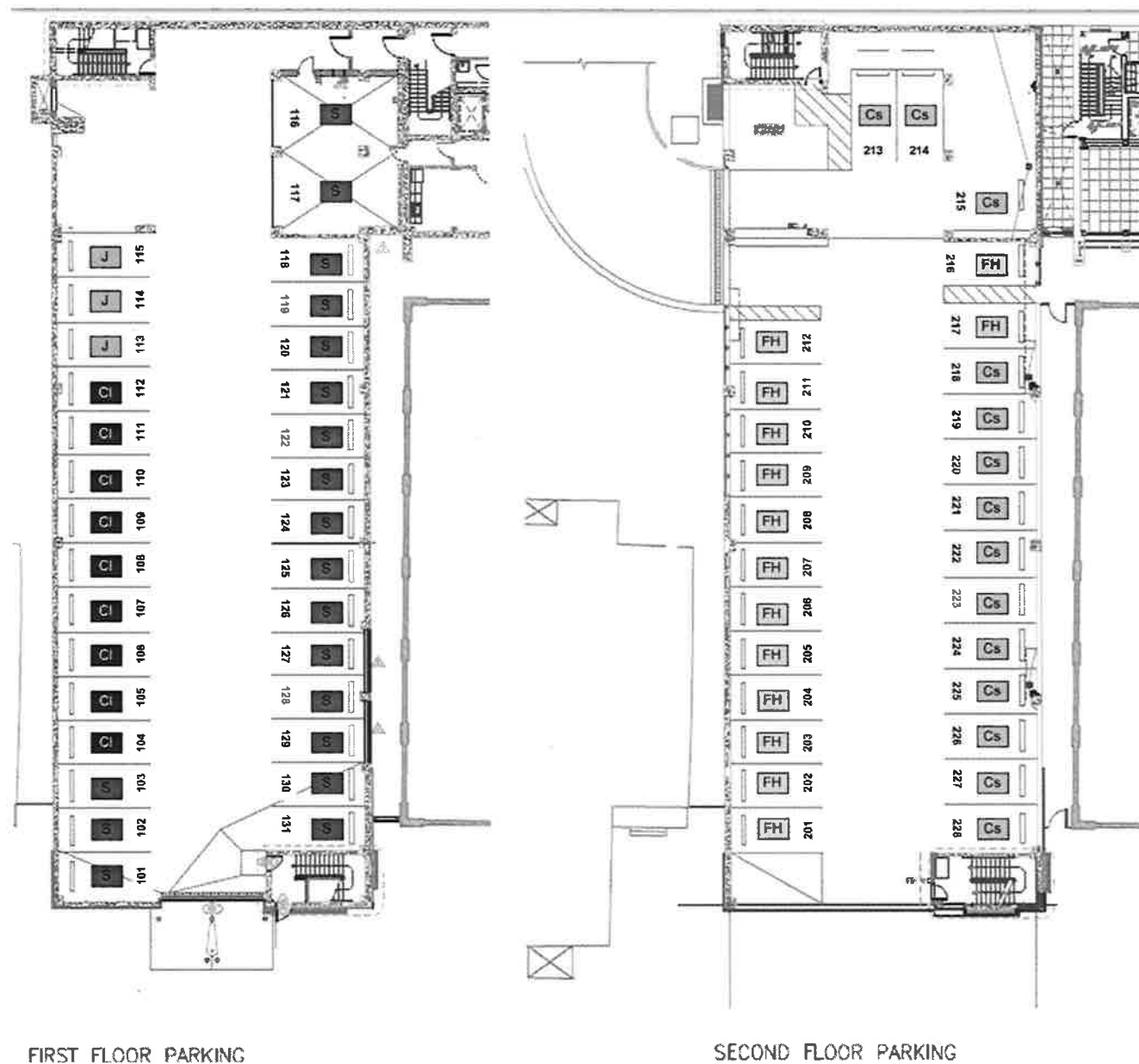
\_\_\_\_\_  
Notary Public  
Notary Registration No. 188151

My commission expires: 4/30/2013



## J&DR Parking Plan

- S** Sheriff
- Cl** Court Clerk
- J** Judge
- Ca** Community Attention
- Cs** Court Services
- FH** Frank Hardy, Inc.
- P** Public
- City** City - Use TBD
- Al** County - Use TBD



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