

ORDINANCE NO. 6641-09

AN ORDINANCE AUTHORIZING AND DIRECTING THE ACTING CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST, ON BEHALF OF THE CITY OF NEWPORT NEWS, VIRGINIA, THAT CERTAIN REAL ESTATE PURCHASE CONTRACT, AND ALL OTHER AGREEMENTS, DOCUMENTS AND NOTES RELATED TO THAT PURCHASE OF REAL ESTATE ADJACENT TO THE LEE HALL RESERVOIR IN THE CITY OF NEWPORT NEWS, VIRGINIA, BY AND BETWEEN THE CITY OF NEWPORT NEWS, VIRGINIA, AND MULBERRY ASSOCIATES, INC., DATED THE 27th DAY OF OCTOBER, 2009.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Newport News:

1. That it hereby authorizes and directs the Acting City Manager to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, that certain Real Estate Purchase Contract, and all other agreements, documents and notes related to that purchase of real estate adjacent to the Lee Hall Reservoir in the City of Newport News, Virginia, by and between the City of Newport News, Virginia, and Mulberry Associates, Inc., dated the 27th day of October, 2009.

2. That a copy of the said Real Estate Purchase Contract is attached hereto and made a part hereof.

3. That this ordinance shall be in effect on and after the date of its adoption, October 27, 2009.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON OCTOBER 27, 2009

Mabel Washington Jenkins, CMC
City Clerk

Joe S. Frank
Mayor

A true copy, teste:

City Clerk

REAL ESTATE PURCHASE CONTRACT

THIS CONTRACT OF PURCHASE is made this 27th day of October, 2009, by and between the **CITY OF NEWPORT NEWS, VIRGINIA**, a Virginia municipal corporation, or its assigns (hereinafter called "Purchaser"), and **MULBERRY ASSOCIATES, INC.**, a Virginia corporation (hereinafter called "Seller"), provides as follows:

1. REAL PROPERTY. Purchaser agrees to buy and Seller agrees to sell a parcel of land containing 2.1615 acres, known as Parcel 2, Mulberry Associates (the "Property"), and being also described as Assessor Parcel #042.0002-04, together with all improvements, leases and contracts related thereto. See attached Exhibit "A" for a more complete description of the Property.

2. PRICE. The total Purchase Price of the Property is TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00). The purchase price shall be paid as follows: \$25,000.00 by check(s), at closing.

2.A. ADDITIONAL CONSIDERATION. As additional consideration for the purchase of this Property, Purchaser will reimburse Seller all reasonable costs, to include permit fees, associated with moving the current Holiday Inn Express sign to a location on other property of Seller that is acceptable to Seller and Purchaser. Purchaser will assist Seller and its contractor in obtaining all required approvals to relocate the sign. If access is required across a portion of Parcel 2 to access the relocated sign, then Seller will be allowed to retain a reasonable easement for access to the sign location for future service and maintenance. Location of any such retained easement shall be mutually acceptable to Purchaser and Seller. In addition, Purchaser will be solely responsible for maintenance and upkeep of the jointly owned roadway providing access to Parcel 2 and running along side the reservoir behind the motel located on Parcel D adjacent to Parcel 2 and currently known as the

Mulberry Inn. Note that said roadway is understood to be the former Route 60 that was abandoned by the Commonwealth of Virginia when the current Route 60 was relocated to its present location.

3. LEASE ASSIGNMENT. Seller shall assign any leases related to the Property to Purchaser and deliver security deposits, if any, held pursuant to such leases to Purchaser at settlement.

4. SETTLEMENT DATE. Full settlement by all parties shall be made at the offices of the Purchaser's attorney on or before December 31, 2009, or as soon thereafter as possible.

5. CONVEYANCE AND POSSESSION. Seller agrees to convey marketable, fee simple title to the property to Purchaser by general warranty deed insurable at normal rates, and free and clear from all liens, and subject only to easements of record as of October 27, 2009. Purchaser shall have possession of the property at closing unless specified otherwise in this Contract of Purchase.

6. DELIVERIES AT SETTLEMENT. At settlement, Purchaser shall pay to Seller the Purchase Price as provided in Section 2 by check and Seller shall prepare, execute, acknowledge and deliver to Purchaser or Purchaser's representative (i) the deed that is described in Section 5 (the "Deed"), (ii) an affidavit as to liens and possession (the "Title Affidavit") in form and substance sufficient for Purchaser to have title insurance company, selected by Purchaser, issue to Purchaser as to the property an owner's policy of title insurance, without exception for filed or unfilled mechanics' or materialmen's liens or rights of third parties to possession, (iii) a Non-Foreign Certification setting forth Seller's taxpayer identification number and such other information as may be necessary to fulfill reporting requirements of Section 6-45 of the Internal Revenue Code of 1986 (the "1099 Certificate"). The parties agree to execute such other documents at settlement as may be

reasonably necessary to consummate the transaction contemplated hereby.

7. COSTS AND EXPENSES. At settlement, Seller shall pay (a) the costs of preparing the Deed, the Lien Affidavit, the Non-Foreign Certification and the 1099 Certificate, (b) the grantor's tax imposed pursuant to Section 58.1-802 of the Code of Virginia (1950) as amended, in connection with the recordation of the Deed and (c) any real estate commission due any broker or realtor arising from the transaction. At Settlement, Purchaser shall pay all costs of (i) examination of title to the Property, (ii) any title insurance premiums as to its purchase of the Property, and (iii) Clerk's fees and other taxes for the recordation of the Deed. Current real estate taxes and other assessments against the Property, if any, as to the Property shall be prorated between Seller and Purchaser, and paid, as of the date of settlement. If either the assessment or rate for current real estate taxes is not available as of the date of settlement such proration shall be based on the real estate tax assessment or rate, as the case may be, for the previous tax year, and each party shall pay their prorated portion of any additional real estate taxes as to Property upon the date that the assessment or rate, as the case may be, shall have been established for the tax year in which settlement occurs.

8. LOSS OR DAMAGE. All risk of loss or damage to the property by fire, windstorm, casualty, or other cause is assumed by Seller until settlement. In the event of substantial loss or damage to the property before settlement, Purchaser shall have the option of either (i) terminating this Contract of Purchase and recovering the deposit, if any, or (ii) affirming this Contract of Purchase, in which event Seller shall assign to Purchaser all of Seller's rights under any policy or policies of insurance applicable to the property.

9. REPRESENTATIONS AND WARRANTIES. Seller represents and warrants to Purchaser, both as of the date of this Agreement and the closing date (unless otherwise indicated), as to the property they are selling, as follows:

a. There are no pending condemnation proceedings or eminent domain proceedings against the property to be sold and Seller has no knowledge of any threatened condemnation proceedings.

b. To Seller's knowledge there are no violations of laws, ordinances, rules or regulations of any governmental authority having jurisdiction over the property to be sold and Seller has received no notices thereof.

c. To the best of Seller's knowledge, Seller is in compliance in all respects with all applicable federal, state and local laws (collectively the "Laws"), including, without limitation, those relating to toxic hazardous substances and other environmental matters, and, that no portion of the property it is selling is being used or has been used at any previous time, for the disposal, storage, treatment, processing or other handling of hazardous or toxic substances. Seller warrants the Property it is selling and any improvements to that property at settlement to be free from environmental contamination, including asbestos (unless lawfully contained) and lead based paint (unless lawfully contained) and will provide such evidence of such freedom from environmental contamination on or before the date of settlement as shall be deemed satisfactory to the City Manager, in his sole discretion. If any environmental contamination is found in or on the Property prior to settlement for which any removal or remedial action is required pursuant to Laws, Seller agrees that it will, at its sole cost and expense, remove or take such remedial action promptly and hold Purchaser harmless from any such cost or expense.

d. That the execution and delivery of this Agreement and the consummation of the transaction as herein contemplated, in compliance with the terms of this Agreement, shall not conflict with, or result in any breach of any of the terms or provisions of, or constitute default under,

any instrument or agreement to which Seller is a party or by which any of Seller's Property is or may be bound, or any applicable regulations of any governmental agency, or any judgment, order or decree of any court having jurisdiction over Seller or its respective properties.

e. Seller will own fee simple title to the Property it is selling on the date of closing.

f. This Agreement is, and the other settlement documents shall be at the time of their execution and delivery, legal, valid and binding obligations of Seller and at the settlement shall be sufficient to convey title (if they purport to do so).

g. There are no leases, licenses, or agreements, oral or written, now in effect with respect to the Property, and there will be none in effect at the time of closing.

h. There are no liens or delinquent real estate taxes and stormwater fees presently against the Property and all real estate taxes and stormwater fees shall be paid as provided in Paragraph 7.

i. There are no service, maintenance, utility, employment, or other contracts or agreements affecting the Property, oral or written.

j. There are no, and at settlement there will be no, outstanding contracts for any improvements to the Property which have not been fully paid for, and Seller shall cause to be discharged all mechanic's or materialmen's liens arising from any labor or materials furnished to the Property it intends to sell prior to settlement.

k. Should any of the representations or warranties set forth in paragraphs 9.a. through 9.j. be inaccurate or untrue, as it relates to the Property it intends to buy, Purchaser shall have the option of (i) closing subject thereto, or (ii) canceling this agreement; however, in the event that any remediation required by paragraph 9.c. (the Remediation Work) is underway but has not

been completed, settlement shall take place and the purchase price, less grantor's tax, shall be escrowed until completion of the Remediation Work; in the event that said Remediation Work is not completed by Seller, such amounts as are necessary to complete the Remediation Work may be withdrawn by Purchaser from the amount escrowed and applied to the cost of completion.

10. REAL ESTATE COMMISSIONS. Purchaser represents and warrants that it has incurred no liabilities or claims for brokerage commissions in connection with the execution of this Agreement. Seller represents that it has incurred no liabilities or claims for brokerage commissions in connection with the execution of this Agreement.

11. DEFAULT. If either party defaults under this Purchase Contract, the defaulting party shall be liable for any expenses and losses incurred by the non-defaulting party, such expenses and losses to include any attorney's fees incurred, if any, in connection with this transaction and the enforcement of such Contract.

12. CAPTIONS. The headings and captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of intent of this Agreement, nor any provision herein contained.

13. SURVIVAL. The representations and warranties (except the warranties and covenants of Seller set forth in paragraph 9.c. which shall terminate under certain conditions as therein provided) contained in this Agreement shall survive settlement hereunder and the delivery of the deed of conveyance.

14. MISCELLANEOUS. This Contract of Purchase is a legal binding contract and constitutes the entire agreement among the parties and may not be modified or changed except by written instrument executed by all the parties, and shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the parties. No prior or subsequent statements or representations shall be binding upon a party unless reduced to writing in the form of an addendum to this contract. No presumption as to authorship shall apply as to this contract and its terms shall be interpreted and enforced in accordance with the laws of the Commonwealth of Virginia. Any action to enforce any terms of this contract shall be brought and maintained in the Circuit Court for the City of Newport News, Virginia.

WITNESS the following signatures:

SELLER:

MULBERRY ASSOCIATES, INC.

By _____
ROBERT G. BECK, President

COMMONWEALTH OF VIRGINIA
City of Newport News, to wit:

I, _____, a Notary Public in and for the City and Commonwealth aforesaid, whose commission expires on the ____ day of _____, _____, do hereby certify that Robert G. Beck, President of Mulberry Associates, Inc., whose name is signed to the foregoing writing, hereto annexed, has acknowledged the same before me in my City and Commonwealth aforesaid.

GIVEN under my hand this ____ day of _____, 2009.

Notary Public
Registration No. _____

PURCHASER:

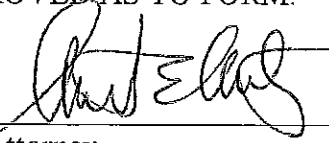
CITY OF NEWPORT NEWS

By _____
NEIL A. MORGAN, Acting City Manager

ATTEST:

APPROVED AS TO FORM:

City Clerk



City Attorney

COMMONWEALTH OF VIRGINIA
City of Newport News, to wit:

I, _____, a Notary Public in and for the City and Commonwealth aforesaid, whose commission expires on the _____ day of _____, _____, do hereby certify that the CITY OF NEWPORT NEWS, by Neil A. Morgan, as Acting City Manager and as attested by Mabel Washington Jenkins, as City Clerk, whose names are signed to the foregoing writing, hereto annexed, have acknowledged the same before me in my City and Commonwealth aforesaid.

GIVEN under my hand this _____ day of _____, 2009.

Notary Public
Registration No.: _____

b115035

EXHIBIT A

ALL that certain tract or parcel of land lying and being in the City of Newport News, Virginia, containing 2.1615 acres and being designated as Parcel "2" according to the plat entitled "SUBDIVISION PLAT PROPERTY OF MULBERRY ASSOCIATES, INC., NEWPORT NEWS, VIRGINIA," made by Alfonso & Associates, Inc., dated June 15, 2006, of record in the Clerk's Office of the Circuit Court of the City of Newport News, Virginia in Deed Book 2154, at page 1923.

Subject to all easements and encumbrances of record.