

COUNCIL OF THE CITY OF ABERDEEN
Ordinance No. 18-O-05

Date Introduced: February 26, 2018

Sponsored by: Councilwoman Sandra J. Landbeck and Councilman Melvin T. Taylor

Amendments Adopted:

Public Hearing: March 12, 2018

Date Adopted: March 26, 2018

Date Effective: April 16, 2018

1 **AN ORDINANCE concerning**

2
3 **CONTRACT OF SALE FOR 34 NORTH PHILADELPHIA BOULEVARD SURPLUS**
4 **PROPERTY**

5
6 **FOR** the purpose of approving a certain Contract for the Purchase and Sale of Real Property
7 with Keyona Investors LLC, for the sale of certain real property at 34 North Philadelphia
8 Boulevard, Aberdeen, MD, 21001; determining that such property as described in the Contract of
9 Sale is not needed for public use and authorizing the conveyance of such property pursuant to
10 such Contract of Sale; and all matters generally related to the disposition of certain City property.

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12 * * * * *

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14 **EXPLANATORY STATEMENT:** The City owns a certain 1.023 acres, more or less,
15 parcel of real property improved with an existing 27,937 square foot commercial building with
16 an address of 34 N. Philadelphia Blvd., Aberdeen, Maryland (Tax Parcel ID No. 02-017008, Tax
17 Map 0205). The City has determined that this property is not needed for public use. The City
18 has negotiated a private sale Contract for the Purchase and Sale of Real Property with Keyona
19 Investors LLC, for the sale and purchase of this property to Keyona Investors LLC for
20 redevelopment as senior residential uses to include senior apartments and senior day care.
21 Pursuant to the Contract of Sale the City will receive from Keyona Investors LLC the sum of
22 \$455,000, which the Mayor and Council deems to be reasonable considering the age and
23 condition of the building and the tax revenues and community benefits that capital reinvestment
24 will bring to the City. The Mayor and Council believes that the Contract of Sale is in the interests
25 of the City and its residents.

26
27 **SECTION 1. BE IT ENACTED BY THE COUNCIL OF THE CITY OF**
28 **ABERDEEN,** that a certain Contract for the Purchase and Sale of Real Property between the
29 City of Aberdeen and Keyona Investors LLC, a copy of which is attached to this Ordinance, is
30 ratified and approved, and the City Manager is authorized to execute such Contract of Sale on

1 behalf of the City.

2 **SECTION 2. AND BE IT FURTHER ENACTED BY THE COUNCIL OF THE**
3 **CITY OF ABERDEEN**, that the City Council hereby determines that the property described in
4 the EXPLANATORY STATEMENT above is not needed for public use, and authorizes the City
5 Manager to execute and deliver on behalf of the City, a Deed to the property consistent with the
6 Contract for the Purchase and Sale of Real Property and such other usual and customary
7 documents required to effectuate the conveyance.

8
9 **SECTION 3. BE IT FURTHER ENACTED BY THE COUNCIL OF THE CITY**
10 **OF ABERDEEN**, that this Ordinance shall become effective at the expiration of twenty (20)
11 calendar days following adoption.

COUNCIL OF THE CITY OF ABERDEEN



Patrick L. McGrady, Mayor

Steven E. Goodin, Councilman

Sandra J. Landbeck, Councilwoman

Timothy W. Lindecamp, Councilman

Melvin T. Taylor, Councilman

ATTEST:

SEAL:



Monica A. Correll, City Clerk

Date

March 26, 2018

CONTRACT OF SALE

THIS CONTRACT OF SALE ("Contract") is made as of the 8th day of March, 2018, by and between City of Aberdeen ("Seller"), and Keyona Investors LLC ("Buyer").

RECITALS

A. The Seller is owner of the parcel of land situated at 34 N. Philadelphia Blvd, Aberdeen MD 21001, in Harford County, Maryland containing approximately 1.023 acres, more or less, as more particularly shown outlined in red on EXHIBIT A attached hereto, together with the various building improvements situated thereon as shown on EXHIBIT A and other improvements, and all of the rights, easements, tenements and appurtenances pertaining thereto, including any right, title and interest of Seller in and to streets, roads, alleys, parking areas, rights-of-way, and all items of personal property attached to the building improvements (all of which is referred to collectively as, the "Property").

B. The Buyer has agreed to purchase the Property, and the Seller has agreed to sell the Property, upon the terms and conditions set forth in this Contract.

AGREEMENTS

NOW, THEREFORE, in consideration of the Recitals, which are hereby made a part hereof, the mutual covenants of the parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

ARTICLE I

SALE AND PURCHASE AGREEMENT AND STUDY PERIOD

1.1 Seller hereby agrees to sell the Property to the Buyer, and the Buyer hereby agrees to purchase the Property from the Seller, pursuant to terms set forth in this Contract.

1.2 Seller hereby agrees that Buyer shall have a period of sixty (60) days (the "Study Period") commencing upon the later of (i) the date this Contract is executed by Seller, and (ii) Seller's compliance with Section 3.1.(g) required herein (the "Effective Date") in which to make such studies and investigations of the Property as Buyer deems necessary or appropriate in its sole discretion. In the event Buyer determines that the Property is not suitable for Buyer's intended use of the Property for any reason in Buyer's reasonable discretion, Buyer shall have the right and option to terminate this Contract upon written notice delivered to Seller, in which case neither party shall have any further liability to the other and the Deposit shall be returned to Buyer pursuant to Section 2.2.

1.3 Seller hereby agrees to deliver to Buyer upon the Effective Date copies of any and all environmental studies completed on the property.

ARTICLE II

PURCHASE PRICE

2.1 The purchase price to be paid for the Property (the "Purchase Price") shall be the sum of Four Hundred and Fifty Five Thousand Dollars Dollars (\$ 455,000), of which Twenty Five Thousand Dollars (\$25,000) has been paid by Buyer upon the execution of this Agreement as an earnest money deposit to be either applied against the Purchase Price at Closing (as hereinafter defined) or refunded to Buyer. The balance of the Purchase Price shall be paid by Buyer at Closing in accordance with Article III.

2.2 The aforesaid earnest money deposit shall be held in escrow by MacKenzie Commercial Real Estate Services, LLC of Baltimore, Maryland, as escrow agent, and shall be deposited in an interest-bearing escrow account. Such deposit, and all interest earned thereon, is referred to as the "Deposit". In the event Buyer terminates this Contract under Section 1.2 the entire Deposit and interest earned thereon shall be immediately paid to Buyer. Otherwise, the Deposit shall be applied to the Purchase Price at the Closing. All interest earned shall be applied to the Purchase Price at Closing.

ARTICLE III

CLOSING

3.1 The closing of the transaction (the "Closing") shall be held not later than thirty (30) days after the conclusion of the Study Period or on such earlier date as may be mutually agreeable to all parties (the "Closing Date"), time being the essence of this Agreement.

3.2 Closing shall be held at such time of day and place as the parties shall select.

3.3 At Closing, Seller shall:

(a) Execute and deliver to the Buyer a special warranty deed with covenants against encumbrances and of further assurances, in proper form for record, conveying to Buyer or such other parties designated by Buyer (the "Buyer's Designees") good and merchantable fee simple title to the Property, free and clear of any encumbrances, claims, charges, liens, leases and judgments. Title shall be insurable at standard rates by a recognized title insurance company licensed to do business in the State of Maryland.

(b) Deliver to the Buyer possession of the Property as described in Article VIII.

(c) Execute and deliver to the Buyer an assignment, in a form satisfactory to the Buyer, assigning to the Buyer all of the Seller's interest in (i) all guarantees and warranties pertaining to the Property, and (ii) all certificates of occupancy, licenses, permits, authorizations and approvals issued with respect to the Property (collectively, the "Permits").

(d) Deliver to the Buyer all original warranties, guarantees and Permits pertaining to the Property, and any plans and drawings pertaining to the Property which Seller may have in its possession.

(e) Execute and deliver all instruments reasonably required by the title company insuring title to the Property on the final policy of title insurance.

(f) Pay the costs allocable to it under Article VI.

(g) Provide to Buyer written confirmation of the removal of all on-site asbestos and current compliance with the State of Maryland's Environmental Compliance Regulations, evidenced by a "NO FURTHER ACTION" letter or similar written affirmation of the Property's compliance.

(h) Buyer shall enter into a deed restriction for the Property that requires, for a period of ten (10) years from the issuance of a certificate of occupancy for the Property, use of the Property for senior residential purposes, including senior apartments and senior day care, related commercial office or medical space, or multi-family apartments at rental or sale market rates consistent with other comparable senior or multi-family residential properties in the Aberdeen area.

3.4 At the Closing, Buyer shall pay the balance of the Purchase Price in cash or by certified check.

ARTICLE IV

SELLER'S WARRANTIES

4.1 Seller's Representations and Warranties. Seller represents and warrants to Buyer, now and as of the Closing Date, as follows:

(a) Seller is duly organized, validly existing and in good standing as a municipal government under the laws of the State of Maryland.

(b) Seller has the power, legal right and authority necessary to carry on its business as now conducted, to execute and deliver this Contract, to engage in the transactions contemplated by this Contract, and to perform its obligations hereunder.

(c) The execution and delivery of this Contract, and the carrying out of the transactions contemplated by this Contract, and will have complied with all necessary legal requirements for the disposition of the Property.

(d) There is no litigation, proceeding, investigation or claim pending or threatened against or affecting Seller which would adversely impact the Property.

(e) Neither the execution of this Contract nor the consummation of the transactions contemplated hereby will: (i) conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, any agreement or instrument to which the Seller is a party; (ii) violate any restrictions to which the Seller is subject; or (iii) conflict with or constitute a violation of any applicable code, resolution, law, statute, regulation, ordinance, rule, judgment, decree or order.

(f) Seller is not a foreign person with Section 1445 of the Internal Revenue Code.

(g) The Seller has not used and to the best of Seller's knowledge the Property has never been used for hazardous waste disposal. To the best of Seller's knowledge, the Property is not in violation of any Federal, state or local law, ordinance or regulation relating to industrial or environmental conditions on, under or about the Property, including, but not limited to, soil, ground water, toxic waste or biological conditions; and there has not been used, generated, manufactured, stored or disposed of on, under or about the Property or transported to or from the Property any Hazardous Materials. For the purposes of this paragraph, the term "Hazardous Materials" shall include but not be limited to flammable explosives, radioactive materials, hazardous wastes, toxic substances, biological materials, and any other encompassed in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, and all applicable state and local laws, regulations and publications.

(h) From the date hereof, Seller shall not mortgage, lease or otherwise encumber the Property, execute any easements, covenants, conditions or restrictions with respect to the Property or seek any zoning changes or other governmental approvals with respect to the Property.

(i) Seller has not made, and will not make prior to the Closing, any commitments to the applicable governmental authorities, any adjoining or surrounding property owners, any civic association, any utility or any other person or entity, which would be binding upon the Property.

(j) Seller has good, marketable and insurable title in fee simple to the Property. Any mortgages, judgments or liens affecting any portion of the Property shall be released as of the Closing Date.

(k) From the date of this Contract until the Closing, the Property shall be kept in good working order. Buyer understands that it is buying the Property in its "As Is" condition and shall include the existing telephones and telephone equipment; and the Seller makes no representations concerning the condition of the improvements on the Property.

(l) To the best of its knowledge, Seller is in compliance with all applicable laws, ordinances, regulations, statutes, rules, and restrictions pertaining to and affecting the Property.

(m) Seller has not received notice of the violation of: (i) any law, ordinance, resolutions, statute, rule or regulation of any governmental agency or any quasi-governmental agency with respect to the Property or any part thereof; (ii) any right-of-way, easement or other encumbrance affecting the Property, either as the servient or dominant estate; or (iii) any covenant, restriction or condition imposed upon the Property or any part thereof by any instrument in the chain of title to the Property, or otherwise affecting title to the Property (e.g. restrictions in prior deeds in the chain of title to Seller).

(n) Seller has no knowledge of any condemnation or eminent domain proceedings pending or contemplated against the Property or any part thereof or interest therein, and

the Seller has received no notice, oral or written, of the desire of any public authority or other entity to take or use the Property or any part thereof or interest therein.

(o) There are no leases, ground leases, contracts of sale, tenancies or occupancy agreements affecting the Property or any part thereof and as of the date of Closing, there are no parties in possession of any portion of the Property as lessees, or tenants at sufferance, except for the occupancy of the Seller.

Seller will not cause or suffer any action to be taken which would cause any of the foregoing representations or warranties to be untrue as of the Closing. Seller shall immediately notify the Buyer, in writing, of any event or condition which occurs prior to Closing, which causes a change in the facts relating to, or the truth of, any of the above representations or warranties. The foregoing representations and warranties shall be continuing and shall be true and correct on the date of Closing with the same force and effect as if made at that time.

4.2 Buyer's Representations and Warranties. Buyer represents and warrants to Seller, now and as of the Closing Date, as follows:

(a) Buyer has the power, legal right and authority necessary to carry on its business as now conducted, to execute and deliver this Contract, to engage in the transactions contemplated by this Contract, and to perform its obligations hereunder.

(b) The execution and delivery of this Contract, and the carrying out of the transactions contemplated by this Contract, and the performance and observance of the terms, agreements and provisions herein, have been duly authorized by all necessary action of the Buyer.

ARTICLE V

CONDITIONS TO CLOSING

5.1 Each and every obligation of Buyer to be performed at the Closing shall be subject to the satisfaction of the following conditions:

(a) No suit, action or other proceeding shall have been instituted or threatened before any court or administrative agency, and Seller shall not have received notice of any such suit, action or other proceeding, which could result in an order to decree enjoining the consummation of the transactions contemplated by this Contract or the divestment (including by reason of condemnation or a sale in lieu thereof) of, or the creation of any covenant or easement on, any portion of the Property.

(b) There shall not have been any breach of any warranty or any misrepresentation with respect to the warranties given by Seller in Article IV hereof.

(c) Title to the Property shall be in the condition contemplated by Section 3.3(a).

5.2 If any condition precedent to Closing set forth in this Article V is not satisfied prior to the Closing Date, the Buyer may elect to (a) terminate this Contract by written notice to the Seller

and upon such notice the Deposit shall be immediately paid to Buyer and this Contract shall then be of no further force and effect, or (b) waive such condition.

ARTICLE VI

ADJUSTMENTS, TAXES, AND CLOSING COSTS

6.1 The cost of examination of title, title insurance covering the Property, tax or lien certificates, preparation of the deed to the Property, notary fees, and recording charges, shall be paid by the Buyer at its sole expense.

6.2 All property transfer and recordation taxes payable with respect to the conveyance of the Property shall be divided equally between Seller and Buyer and paid at the Closing.

6.3 All real property taxes, ground rents and all other public or governmental charges or assessments, general or special, against the Property which are or may be payable on an annual basis (including Metropolitan District, Sanitary Commission or other benefit charges, assessments, liens or encumbrances for sewer, water, drainage or other public improvements contemplated or commenced on or prior to the date hereof, or subsequent thereto) shall be adjusted as of the Closing and shall be assumed and paid thereafter by the Buyer, whether assessments have been levied or not as of the Closing.

6.4 Each party shall be responsible for its own legal and accounting fees.

ARTICLE VII

DEFAULT AND INDEMNIFICATION

7.1 If all conditions and other events precedent to the Buyer's obligation to consummate the transactions contemplated by this Contract have been satisfied or waived, but the Buyer nevertheless fails, refuses or is unable to consummate the purchase contemplated by this Contract, then the Seller's remedy shall be to either (a) retain the Deposit as Seller's full liquidated damages and terminate this Contract, in which case all parties hereto shall be released of all further liability hereunder, and this Contract shall become null and void and of no further force and effect, or (b) bring suit for specific performance.

7.2 If Seller fails, refuses or is unable to consummate the transactions contemplated under this Contract, then the Buyer, in addition to any other remedy it may have at law or in equity including, but not limited to the right to bring suit for specific performance, shall have the right to terminate this Contract.

7.3 . Without waiving any immunities provided by law, and subject to (i) compliance with the Local Government Tort Claims Act, (ii) available insurance coverage, and (iii) budgetary appropriations, the Seller agrees to indemnify and hold the Buyer harmless from and against any and all liabilities, expenses, costs (including reasonable attorneys' fees) and claims whatsoever arising from any breach by the Seller of any of its representations, covenants and obligations described in this Contract. Seller's obligations under this paragraph shall survive any termination of this Contract.

7.4 The Buyer agrees to indemnify and hold the Seller harmless from and against any and all liabilities, expenses, costs (including reasonable attorneys' fees) and claims whatsoever arising from any breach by the Buyer of any of its representations, covenants and obligations described in this Contract. Buyer's obligations under this paragraph shall survive any termination of this Contract.

ARTICLE VIII

POSSESSION AND INSPECTION

8.1 The Seller shall deliver possession to the Property to Buyer on the date of Closing free of tenancies. The Buyer and its agents, representatives, consultants and employees, at their own risk and expense, upon prior written notice to Seller, may enter the Property at reasonable times during Seller's normal business hours and inspect, measure and take non-invasive tests on the Property from time to time prior to Closing. Buyer agrees to hold harmless, indemnify and defend Seller from all claims for damages to person or property arising from Buyer's exercise of its rights under this paragraph and shall provide Seller with written evidence of a comprehensive general liability insurance policy that names Seller as an insured party against any claims. Buyer's obligations under this paragraph shall survive any termination of this Contract.

ARTICLE IX

RISK OF LOSS

9.1 The Seller assumes the risk of loss or damage to the Property by fire or other casualty prior to Closing. In the event of substantial destruction or damage to the Property, Buyer may elect either that (a) this Contract shall remain in full force and effect, in which case the Seller's interest in any insurance award relating to such destruction or damage shall be assigned to the Buyer, or (b) this Contract shall be terminated, in which case the Deposit shall be immediately paid to Buyer.

ARTICLE X

CONDEMNATION OF THE PROPERTY

10.1 If prior to the Closing all or a part of the Property is taken by eminent domain or condemnation (or sale in lieu thereof), Buyer may elect either that (a) this Contract Shall remain in full force and effect, in which case the purchase of the Property, less any interest taken by eminent domain or condemnation (or sale in lieu thereof), shall be effected and the Seller's interest in the condemnation award shall be assigned to the Buyer, or (b) this Contract shall be terminated, in which case the Deposit shall be immediately paid to Buyer.

ARTICLE XI

REAL ESTATE COMMISSION

11.1 The parties mutually represent to each other that none of them employed or had any negotiations or dealings in connection with this transaction with any brokers or finders, other than MacKenzie Commercial Real Estate Services, LLC ("Broker"). Seller agrees to pay Broker at the time of closing, a brokerage fee equal to Six Percent (6%) of the Purchase Price in accordance with the listing agreement between Seller and Broker. Seller and Buyer agree to defend, indemnify and hold each other harmless from and against any claims of any person, firm or corporation claiming any brokerage commission, finder's fee or similar compensation based on any alleged negotiations or dealings with or employment by either of them contrary to the foregoing representations, together with all expenses incurred including court costs and reasonable attorneys' fees. This paragraph shall survive any termination of this Contract.

ARTICLE XII

GENERAL PROVISIONS

12.1 This Contract and its Exhibits constitute the sole, final and entire agreement and understanding of the parties hereto and they shall not be bound by any terms, conditions, statements, representations, oral or written, not contained herein. This Contract may not be changed orally, but only by an agreement in writing signed and executed by the party against whom enforcement of any waiver, change, modification, consent, or by whom discharge, is sought.

12.2 No exercise or waiver, in whole or in part, of any right or remedy provided for this Contract shall operate as a waiver of any other right or remedy. No delay on the part of any party in the exercise of any right or remedy shall operate as a waiver thereof.

12.3 All notices required or permitted to be provided or furnished by either party to the other party shall be in writing and shall be delivered in person with signed receipt or sent by United States certified mail, postage prepaid, return receipt requested, and addressed to Seller at 210 N Philadelphia Blvd, Aberdeen, MD 21001; and to Buyer at 60 N Parke St, Aberdeen, MD 21001. Any notice shall be deemed to have been given and received on the date of delivery indicated on the return receipt or signed receipt.

12.4 This Contract may be executed in any number of counterparts, each of which shall be deemed an original, all of which taken together shall be deemed to be a single agreement.

12.5 Omitted.

12.6 This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective personal representatives, heirs, and successors.

12.7 The terms and provisions of this Contract shall survive Closing and shall not be merged in the deed.

12.8 Time shall be of the essence with respect to each and every provision of this Contract.

12.9 If any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or

unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.

12.10 Each party acknowledges and agrees that it was represented by counsel in connection with this Contract, and that, therefore, in interpreting this Contract any ambiguities herein are not to be resolved either in favor of or against any particular party.

12.11 This Contract shall be construed and interpreted under, and governed and enforced according to, the laws of the State of Maryland.

12.12 The headings and/or captions contained in this Contract are for reference purposes only and shall not in any way affect the meaning or interpretation hereof.

IN WITNESS WHEREOF, the parties have executed this Contract of Sale under seal on the day and year first above written.

WITNESS/ATTEST:

SELLER: CITY OF ABERDEEN


By: _____

Title: _____

Date of Execution: _____

WITNESS/ATTEST

BUYER: KEYONA INVESTORS LLC

_____

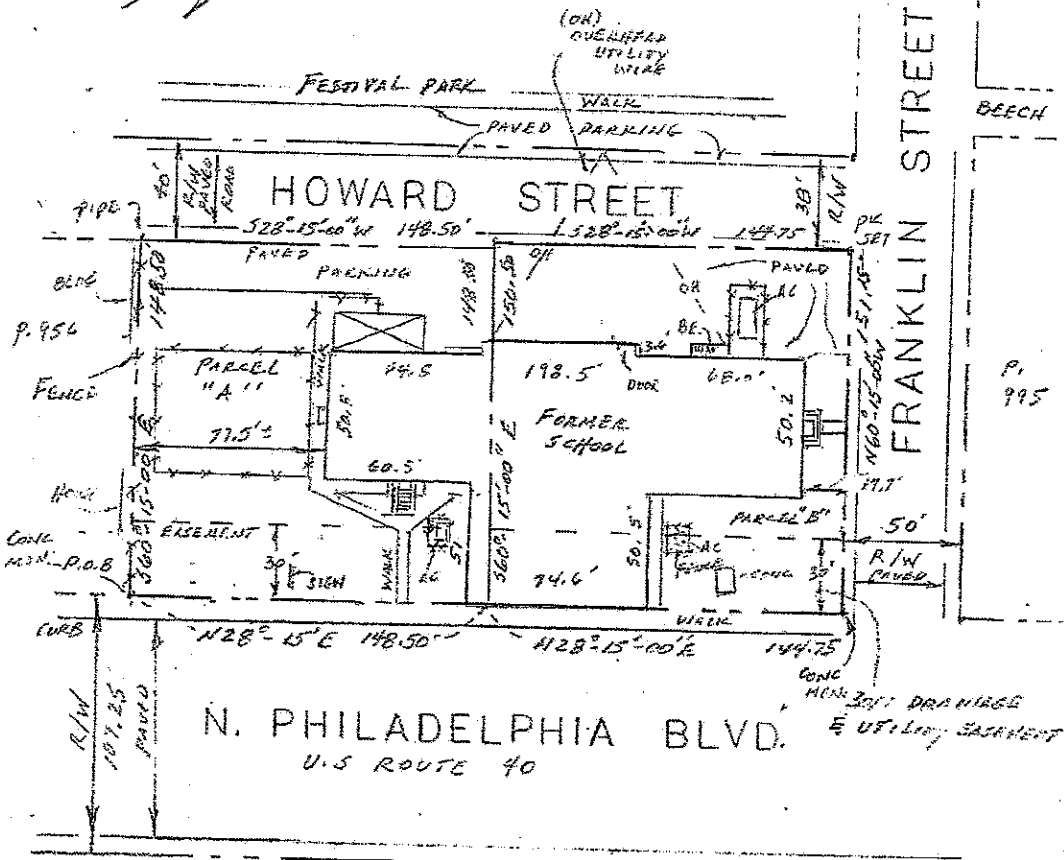
By: _____

Title: Manager

Date of Execution: 03/08/18

CITY OF
ABERDEEN

DEED 952/952 P.B. N



TO W. BEL AIR AVE

34 N. PHILADELPHIA BLVD.
ABERDEEN, MD 21001

DEED REFERENCE: 952/952

TAX MAP 205 PARCEL 952
PLAT BOOK 4-12

I, JOSEPH E. WELSH, A LICENSED PROFESSIONAL
LAND SURVEYOR IN THE STATE OF MARYLAND,
PERSONALLY PREPARED A SURVEY AND THE
SURVEYING WORK REFLECTED IN IT, ALL IN
COMPLIANCE WITH REQUIREMENTS SET
FORTH IN REGULATION .12 OF THE MARYLAND
MINIMUM STANDARDS OF PRACTICE (MSOP), AS
AUTHORIZED UNDER THE ANNOTATED CODE OF
MARYLAND.

Joseph E. Welsh 7-22-17
JOSEPH E. WELSH DATE
MD License #20016 Renews 10/4/2018

Survey Drawing

34 N. Philadelphia Blvd.
Aberdeen, Maryland

2nd Election District
Harford County, Maryland

SURVEYOR SEAL



WELSH ENGINEERING

2 PARADISE DRIVE
HAVRE DE GRACE, MARYLAND 21078

410-939-1304 FAX 410-939-6480

SCALE: 1" = 60' DATE: 7-3-17

DRAWN: *WJW* JOB: 7035

Keyona Investors LLC

65-0107/0550

DATE 03/08/18

PAY TO THE ORDER OF Mackenzie Commercial Real Estate Service LLC \$ 25000.00

Twenty Five Thousand only

DOLLARS

Security features included. Details on back.



MEMO Deposit 34 N Philadelphia

[Signature]

MP

⑆055001070⑆ 0001040880⑈