

COUNCIL OF THE CITY OF ABERDEEN
Ordinance No. 18-O-02

Date Introduced: December 11, 2017

Sponsored by: Mayor Patrick L. McGrady

Amendments Adopted:

Public Hearing: January 11, 2018

Date Adopted: January 22, 2018

Date Effective: February 12, 2018

AN ORDINANCE concerning

CONTRACT OF SALE FOR FORMER MOOSE LODGE SURPLUS PROPERTY

FOR the purpose of approving a certain Contract for the Purchase and Sale of Real Property with Arthur H. Helton and Ann C. Helton, for the sale of certain real property at 102 N. Rogers Street, Aberdeen, MD, 21001; determining that such property as described in the Contract of Sale is not needed for public use and authorizing the conveyance of such property pursuant to such Contract of Sale; and all matters generally related to the disposition of certain City property.

* * * * *

EXPLANATORY STATEMENT: The City owns a certain 1.16 acres, more or less, parcel of real property improved with an existing 7,125 square foot commercial building with an address of 102 N. Rogers Street, Aberdeen, Maryland (Tax Parcel ID No. 02-001144). The City has determined that this property is not needed for public use. The City has negotiated a private sale Contract for the Purchase and Sale of Real Property with Arthur H. Helton and Ann C. Helton, for the sale and purchase of this property to Arthur H. Helton and Ann C. Helton for redevelopment as a sit-down restaurant. Pursuant to the Contract of Sale the City will receive from Arthur H. Helton and Ann C. Helton the sum of \$50,000, which the Mayor and Council deems to be reasonable considering the deteriorated condition of the building and the tax revenues and economic development benefits that capital reinvestment will bring to the City. The Mayor and Council believes that the Contract of Sale is in the interests of the City and its residents.

SECTION 1. BE IT ENACTED BY THE COUNCIL OF THE CITY OF ABERDEEN, that a certain Contract for the Purchase and Sale of Real Property between the City of Aberdeen and Arthur H. Helton and Ann C. Helton, a copy of which is attached to this Ordinance, is ratified and approved, and the City Manager is authorized to execute such Contract of Sale on behalf of the City.

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

7
8 **SECTION 3. BE IT FURTHER ENACTED BY THE COUNCIL OF THE CITY**
9 **OF ABERDEEN**, that this Ordinance shall become effective at the expiration of twenty (20)
10 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 January 22, 2018

**CONTRACT FOR THE PURCHASE AND
SALE OF REAL PROPERTY**

Arthur H. & Ann C. Helton ("Buyer"), with an address of 3 S. Rogers St, Aberdeen, MD 21001 hereby agree to purchase from City of Aberdeen, with an address of 60 N. Parke Street, Aberdeen, Maryland 21001 ("Seller"), and Seller hereby agrees to sell to Buyer the property described below for the price and upon the terms and conditions herein set forth.

1. **PROPERTY DESCRIPTION**

That certain property consisting of land improved with an existing commercial building with an address of 102 N Rogers Street, Aberdeen, Maryland (Parcel ID No. 02-001144), as more particularly described in Schedule "A", which is attached hereto and made a part hereof, together with and including all buildings and other improvements thereon, all rights of Seller in and to any and all streets, roads, highways, easements, and rights-of-way appurtenant thereto (the "Property"). The Property is to be sold "as is, where is," without representations and warranties except as may be expressly provided in the Contract.

2. **PURCHASE PRICE**

Buyer shall pay to Seller for the Property the sum of FIFTY THOUSAND and 00/100 DOLLARS (\$50,000.00). Buyer shall pay the Purchase Price as follows:

- a. The sum of \$5,000 shall be paid in cash as a non-refundable good faith deposit.
- b. The balance of the purchase price shall be paid in cash upon delivery of the Deed at settlement.

3. **EXCEPTIONS**

Buyer agrees to accept title to the Property subject to the following: water line, sanitary sewer, drainage, gas line and main, electrical and telephone easements of record within five feet (5') of exterior lot lines, provided that the existing improvements, if any, do not encroach upon the easements and the easements will not interfere with the Buyer's use of the Property and/or the operation of Buyer's business (the "Permitted Exceptions"). Seller shall not, without Buyer's written consent, cause or permit any lien or encumbrance of any kind, recorded or unrecorded, to be placed upon the Property from the date of this Contract until its termination pursuant to its terms or closing of title pursuant to the terms herein.

4. **DEED**

At the time of closing, Seller shall deliver to Buyer a fully executed Special Warranty Deed with further assurances in recordable form (the "Deed") conveying good and marketable title in fee simple to the Property free and clear from all liens and encumbrances except Permitted Exceptions.

5. **TITLE EVIDENCE**

Within ten (10) business days following the full execution of this Contract, Seller shall deliver to Buyer at Seller's expense a legal description of the Property, together with any existing title insurance policies and reports, title searches or other evidence of title which Seller may have in its possession, including deeds into Seller (collectively, the "Title Documentation").

6. **EXISTING ENVIRONMENTAL INFORMATION**

Within ten (10) business days following the full execution of this Contract, Seller shall also deliver to Buyer any existing environmental audits, tests, reports or notices concerning the Property which Seller may have in its possession (the "Environmental Documentation"). The Title Documentation and the Environmental Documentation may be collectively referred to herein as the "Existing Documentation". In the event this Contract terminates for any reason, Buyer shall promptly return all of the Existing Documentation to Seller.

7. **SETTLEMENT**

Settlement shall take place at a location selected by Buyer within 30 days from the date of satisfaction of all conditions precedent to settlement, but in no event later than March 31, 2018, and subject to the final approval of the Aberdeen City Council. Prior to settlement, Buyer shall prepare, at its costs and expense, and shall submit the deed to Seller for approval, the Deed. The real property taxes upon the Property, and each metropolitan district, front-foot benefit, water rent, or other charge levied or assessed against the Property being acquired by Buyer by any public or quasi-public authority before, at or as a result of settlement, and payable in one or more installments (collectively, "Taxes"), shall be (a) apportioned between the parties hereto as of Settlement based upon the Taxes or (if payable in installments) installment thereof for the entire year or other assessment period during which Settlement occurs, and any adjustment required to accomplish the same may be made after Settlement, if necessary and (b) paid thereafter by Buyer. All transfer and conveyance taxes or documentary stamps and special real estate taxes and assessments in connection with the transfer of title shall be paid by the Buyer.

All charges, if any, for, electricity, telephone service and other utilities furnished to any or all of the Property being acquired by Buyer shall be adjusted between Seller and Buyer as of the date of Settlement. The cost of recording the Deed called for in this Contract shall be paid for by Buyer. All costs related to the issuance of the title policy, including title insurance premiums, shall be paid by Buyer. Buyer and Seller shall each pay their respective attorney's fees.

8. **LEGISLATIVE APPROVAL**

Buyer's and Seller's obligations to close hereunder are contingent upon Seller enacting final legislation pursuant to the Aberdeen City Code, Chapter 121, Disposal of Property, and Section 5-204(c) of the Local Government Article of the Annotated Code of Maryland, approving the terms and provisions of this Contract and the conveyance of the Property to the Buyer as contemplated herein.

9. **BROKER'S COMMISSION**

Seller shall have the obligation to pay the commission of any broker that brought about this sale pursuant to a separate agreement. Seller agrees to indemnify, defend and save each other harmless from and against any action or claim for brokerage or other commission or a finder's fee except those set forth herein.

10. **RISK OF LOSS**

The risk of loss or damage to the Property by fire or other casualty, or of taking by eminent domain, until delivery of the Deed, shall be assumed by Seller, and upon the happening of such event, Buyer shall have the right to terminate this Contract without further liability, or of completing this purchase and receiving the insurance monies collectible for such loss or damage, or the award for taking by eminent domain.

11. **CONTINGENCIES**

Buyer shall have thirty (30) days from the date of execution of this Contract to satisfy or waive the contingencies of this section (the "Review Period"). The Review Period shall be extended for one period of thirty (30) days as necessary provided that Buyer is proceeding diligently to satisfy the contingencies.

This Contract is subject to and contingent upon Buyer being satisfied, in its reasonable discretion, with the Property, the condition of the Property (including environmental condition) and the Existing Documentation. In the event that Buyer is not satisfied for good cause, then Buyer may provide notice to Seller before the expiration of the Review Period terminating the Contract.

Further, this Contract is subject to and contingent upon Buyer obtaining an acceptable title commitment on the Property from a title insurance company in the amount of the purchase price, covering the date hereof, which is satisfactory to Buyer. If the instrument survey map or title commitment disclose any defects in title (other than liens or encumbrances of a definite or ascertainable amount which may be paid at closing from the proceeds due Seller), Seller shall have fifteen (15) days from the date of Buyer's notice of such defects to cure such defects. If such defects are not cured within fifteen (15) days, Buyer may terminate this Contract or Buyer may, at its election, proceed to closing and accept the title as it then is.

Seller shall provide reasonable access to the Property to Buyer in connection with Buyer's review of the Property and satisfaction of the contingencies set forth herein.

12. **SELLER'S ENVIRONMENTAL WARRANTIES AND INDEMNIFICATION**

Seller warrants and represents, to the best of Seller's actual knowledge, that the Property does not contain any of the following:

- a. Hazardous Substances (other than as generated by Buyer under its possession of the Property)
- b. Dry Wells
- c. Septic tank or leach field
- d. Underground or aboveground storage tanks

"Hazardous Substance" means any materials or substances defined as or included in the definition of "Hazardous Substances", "Hazardous Materials", "Hazardous Wastes", "Toxic Substances", or "Toxic Pollutants" under any applicable law regulating the environment, including any substance which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or which contains polychlorinated biphenyls (PCBs), other petroleum hydrocarbons, or asbestos.

Notwithstanding any provisions herein to the contrary, and regardless of Seller's actual or constructive knowledge, Seller, without waiving any immunities to which it may be entitled,

subject to the Maryland Local Government Tort Claims Act, and subject to the limits of any available insurance coverage, hereby indemnifies, defends and holds Buyer harmless from and against any losses, claims, damages or liabilities, joint or several, to which Buyer may become subject which losses, claims, damages or liabilities arise out of the presence or existence of any of the aforementioned items (a), (b), (c) or (d) on or below the surface of the Property, provided that such items were not generated by Buyer, its agents or employees.

13. **NOTICE**

All notices required or permitted pursuant to any provisions of this Contract shall be in writing, sent via nationally recognized overnight courier and shall be effective upon receipt or rejection of same. Notices to be given by either party may be given on their behalf by their attorney. Notices shall be sent to the parties at the following addresses, or any other address which either party may give to the other for such purpose, with copies of all notices to be sent to the attorney for the other party, as follows:

If to Buyer: Arthur H and Ann C Helton
3 S Rogers Street
Aberdeen, MD 21001

If to Seller: City of Aberdeen
Attn.: City Manager
60 N. Parke Street
Aberdeen, MD 21001

Copy to: Frederick C. Sussman, Esq.
Council Baradel
125 West Street, 4th Floor
Annapolis, MD 21401

14. **BINDING EFFECT**

This Contract along with its covenants and conditions shall inure to the benefit of and be binding upon the parties, and their heirs, personal representatives, permitted successors and assigns. Buyer may not assign this Contract, in whole or in part, or Buyer's obligations under this Contract, without the prior written approval of the City, which the City may withhold or condition in the City's sole and unfettered discretion. If the City approves an assignment this Contract shall inure to the benefit of and be binding upon the approved assignee.

15. **AUTHORITY**

The parties hereto represent and warrant that they have the full right, power and authority to enter into this Contract.

16. **WAIVER**

No covenant, term or condition of this Contract shall be deemed to have been waived by Buyer, unless such waiver is in writing by Buyer.

17. **RULES OF CONSTRUCTION**

The following rules shall govern the interpretation of this Contract: (a) Drafter - the fact that this Contract was initially drafted by one party or the other shall have no bearing in its interpretation or construction; (b) Headings - the captions and section numbers appearing in this Contract are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections of this Contract; (c) Counterparts - this Contract may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same instrument; (d) Severability - in the event any provision of this Contract is held by any court having jurisdiction over any dispute arising hereunder to be invalid or unenforceable, then such court shall reinterpret such provision so as to carry out the intent of the parties hereto in a valid and enforceable manner, and the invalidity or unenforceability of such provision, and the remainder of this Contract, including any reinterpretation of such provision, shall remain in full force and effect; (e) Number and Gender - all terms and words used in this Contract, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural and any other gender, masculine, feminine or neuter, as the context or sense of this Contract may require, the same as if such words had been fully and properly written in the number and gender; and (f) Governing Law - the terms and provisions of this Contract shall be interpreted in accordance with and governed by the laws of the State of Maryland without regard to the principles of conflicts of law.

18. **ATTORNEY FEES**

If Buyer breaches this Contract Seller shall be entitled to recover its reasonable attorney fees, costs and expenses of litigation, and court costs in any judicial proceeding to obtain damages for Buyer's breach or to enforce Seller's rights under this Contract, provided that Seller substantially prevails in the proceeding.

19. **TIME OF ESSENCE**

Time shall be of the essence of this Contract.

20. **USE OBLIGATIONS**

a. Buyer agrees to re-develop the property for a sit-down restaurant use and shall open the property for such use. The restriction of the Property being used for a restaurant expires at the end or the 5th year from the date of issuance of a certificate of use and occupancy. Buyer agrees that Seller, at settlement, shall include in the deed to the Property or as part of a separate restrictive covenant a requirement that for the period of not less than five years following settlement the property must be used as and for the restaurant unless the City Council approves an alternate use in writing.

b. Buyer shall hold Seller harmless, and shall indemnify Seller, from and against all claims, demands, settlements and judgments for damages of any type to persons or property arising from the Project.

c. Buyer agrees that the roof replacement shall become the property of Seller immediately upon installation regardless of whether settlement occurs under this Contract. If settlement does not occur the roof replacement will remain the property of the Seller without compensation to Buyer.

21. **FULL EXECUTION**

Upon final approval of the Aberdeen City Council this Contract must be fully executed on or before 28 February 2018 and if full execution is not made in writing and delivered to Buyer at 3 S. Rogers Street, Aberdeen, MD 21001 on or before such time, this Contract shall be of no force and effect.


22. **SURVIVAL**

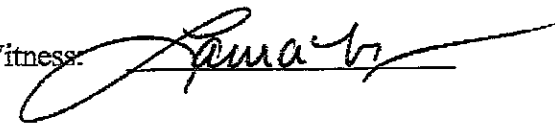
The provisions of this Contract shall survive settlement and shall not be merged into the Deed.


IN WITNESS WHEREOF, Seller and Buyer have caused this Contract to be signed by their duly authorized agents as of this ____ day of December, 2017.

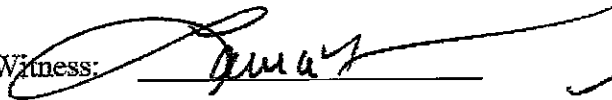
CITY OF ABERDEEN


Witness: 

BY: 
Randy Robertson, City Manager

Witness: 


Arthur H. Helton, Jr.

Witness: 


Ann C. Helton

SCHEDULE A

Description of Property

MOOSE LODGE, BUILDING AND PROPERTY CONSISTING OF 1.16 ACRES AND A
7,125 SQUARE FOOT BUILDING



501 N. Calvert St., P.O. Box 1377
Baltimore, Maryland 21278-0001
tel: 410/332-6000
800/829-8000

WE HEREBY CERTIFY, that the annexed advertisement of Order No 5361797

Sold To:

CITY OF ABERDEEN - CU00175069
60 N Parke St Ste A
ABERDEEN, MD 21001-2454

Bill To:

CITY OF ABERDEEN - CU00175069
60 N Parke St Ste A
ABERDEEN, MD 21001-2454

Was published in "The Record", "Weekly", a newspaper printed and published in Harford County on the following dates:

Dec 22, 2017; Dec 29, 2017

THE CITY OF ABERDEEN
NOTICE OF PUBLIC HEARING
ORDINANCE NO. 18-O-02
Contract of Sale for Former Moose Lodge Surplus Property

The Mayor and City Council will hold a public hearing at Aberdeen City Hall in the Council Chambers, 60 North Parke Street on Monday, January 8, 2018, at 7:00 p.m. to present and receive input on Ordinance No. 18-O-02, Contract of Sale for Former Moose Lodge Surplus Property. The Ordinance would approve a certain Contract for the Purchase and Sale of Real Property with Arthur H. Helton and Ann C. Helton, for the sale of certain real property at 102 N. Rogers Street, Aberdeen, MD, 21001; determining that such property as described in the Contract of Sale is not needed for public use and authorizing the conveyance of such property pursuant to such Contract of Sale; and all matters generally related to the disposition of certain City property.

Copies of the ordinance will be available at City Hall and on the City website, www.aberdeenmd.gov. Residents are encouraged to provide written or verbal comments. Special accommodation by request with advance notice.

Monica A. Correll, MMC
City Clerk

REC 12-2670 Dec 22, 29 5361797

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By *S. Wilkinson*

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