

[This Agreement is subject to the formal approval of the City Council of the City of Hampton by a duly adopted resolution authorizing the acquisition of the subject property.]

AGREEMENT OF SALE

THIS AGREEMENT OF SALE (the "Agreement"), made as of this 17th day of July, 2006, by and between **ARMOND C. CRUMP, SAMUEL A. CRUMP, BARBARA E. MACARIO** (collectively and individually the "Landowner"), and **THE CITY OF HAMPTON**, a municipal corporation of the Commonwealth of Virginia, (the "City") located at 22 Lincoln Street, Hampton, Virginia 23669.

WITNESSETH: That for and in consideration of one dollar and other valuable consideration, receipt of which is hereby acknowledged, the City agrees to buy and the Landowner agrees to sell and convey all its rights and interests in the following described land together with all improvements. The land and improvements subject to this Agreement (the "Property") are described as follows:

Armond C. Crump, et al
222 Pine Chapel Road
Hampton, VA 23666
Legal: 222 Pine Chapel Road 46 x 180
LRSN/RPC #7000220, Tax I.D: 07C007 00 00000

It being the identical real estate which was conveyed by John C. Crump, et ux., unto the said Armond C. Crump, et al., by deed recorded on January 10, 2006 amongst the records in the Circuit Court Clerk's Office for the City of Hampton, Virginia as instrument number 060W 000064.

Together with all right, title and interest of the Landowner, if any, in and to any and all easements, rights of way, private roads and other rights of access, ingress and/or egress adjacent to, appurtenant to or in any way benefiting the above described Property.

1. **Purchase Price.** The total consideration is as follows: ONE-HUNDRED-TWENTY-SEVEN-THOUSAND-DOLLARS AND NO/100 (\$127,000.00) in full for the Property, all appurtenances and improvements thereon (the "Purchase Price"). The Purchase Price represents the value of all estates or interests in such Property. The Purchase Price shall be paid shall be paid by the City to the Landowner at Settlement in lawful money of the United States of America in cash or readily available funds.

a. The aforesaid net total consideration shall be disbursed in accordance with the terms of the Last Will and Testament of Veatrice M. Crump with 50% of the net contract proceeds being payable to Armond C. Crump, 25% to Samuel A. Crump, and 25% to Barbara E. Macario.

2. **Right of Entry.** The City or its agents may exercise the right to enter upon the Property for such purposes as may be necessary for the performance of any due diligence, surveys, environmental or any other studies without further notice to the Landowner. The City is hereby granted thirty (30) days from the date of full execution of this Agreement by all parties (the "Due Diligence Period") to inspect the Property in order to determine the existence of any adverse environmental matters or conditions in, on, under, about, or migrating from or onto the Property. If the City determines during

the Due Diligence Period that the soils and subsurface conditions of the Property are not suitable for its intended use, or determines the existence of any adverse environmental matters or conditions in, on, under, about, or migrating from or onto the Property, the City reserves the right to terminate this Agreement by giving the Landowner written notice of termination not later than 5:00 p.m. on the last day of the Due Diligence Period. Upon receipt of such notification, the Agreement is terminated and neither party shall have any further rights against or obligations or liability to the other hereunder. The City shall be responsible for any damage caused to the Property by its employees, agents or consultants during the performance of any activities in furtherance of its due diligence.

3. **Tenancies/Indemnity.** The Landowner will compensate the tenant and/or tenants of said Property, if applicable, for any damages said tenant or tenants may suffer and sustain by reason of the conveyance agreed to hereunder and will save harmless the City from any and all claims that may be made by said tenant or tenants by reason of such conveyance.

4. **Settlement.** Settlement shall occur at the office of the City's Settlement Agent within forty-five (45) days from the date of full and complete execution of this Agreement by all parties, or as soon thereafter allowing reasonable time to correct any title defects reported by the title examiner and to prepare and sign the necessary documents to enable the City to take proper title to the Property.

5. **Prorations.** All rents, interest, taxes, utilities and other appropriate items shall be prorated and apportioned as of the date of Settlement. Assessments, general or special in nature, pending or confirmed, shall be paid or satisfied in full by the Landowner at Settlement.

6. **Settlement Costs and Expenses/ Tax Consequences of Transaction.** The City shall bear the cost of performing any studies required by the City under due diligence, obtaining a title report for the Property and pay for its own closing costs and attorney's fees associated with Settlement.

The Landowner shall pay for the cost of deed preparation, Grantor's Tax, and the pro-rata real property taxes due at Settlement, and its own attorney's fees, and brokerage costs, if any.

7. **Conveyance/Title.** The Landowner agrees to convey the Property to the City at Settlement by a properly executed and delivered General Warranty Deed with English covenants of title, free of all mortgages, security interests, parties in possession (except as otherwise agreed to in Paragraph 5), encumbrances, tenancies (except as otherwise agreed to in Paragraph 5), and liens (for taxes or otherwise), but subject to all easements, restrictions, rights-of-way and encroachments of record, which do not affect the use of the Property by the City or render the title unmarketable. If the Property does not abut a public road, title to the Property must include a recorded easement providing access thereto. If the examination reveals a title defect of a character that can be remedied by legal action or otherwise within a reasonable period of time, the Landowner, at the Landowner's sole cost and expense, shall promptly take such action as is necessary to cure such defect. If the defect is not cured within thirty (30) days after the Landowner received notice of defect, then either party may terminate this Agreement at the expiration of such thirty (30) day period. Upon written notice of termination of this Agreement, said Agreement shall be terminated, and neither party shall have any further rights against or obligations or liability to the other hereunder.

The Landowner shall supply, at Settlement, all affidavits and any other documents required by the City's title insurance company for the issuance of policy of insurance, including, but not limited to, an affidavit in a form acceptable to the City, and signed by the Landowner that no labor or materials have been furnished to the Property within the statutory period for the filing of mechanics' or materialmen's liens against the Property. If labor or materials have been furnished during the statutory period, the Landowner shall deliver to the City, at Settlement, an affidavit signed by the Landowner and the person(s) furnishing the labor or materials that the costs thereof have been paid.

8. Landowner's Representations and Warranties.

a. For purposes of this Paragraph the following definitions shall apply:

(1) "Hazardous Substances" means asbestos and any and all pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials and hazardous substances as referenced or defined in, or pursuant to, any federal, state, local or other applicable environmental law, statute, ordinance, rule, order, regulation or standard in effect on the date hereof including, without limitation, the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.), as amended, the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 135, et seq.), as amended, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601, et seq.), as amended, and the Toxic Substance Control Act (15 U.S.C. 2601, et seq.), as amended.

(2) "Release" means placing, releasing, depositing, spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.

(3) "Environmental Condition" means any condition, including, without limitation, the Release of Hazardous Substances, located on or affecting the Property that could require remedial action and/or may result in claims, demands, liabilities, costs and/or expenses to the City.

(4) "Notice" means any written, civil, administrative or criminal summons, citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication from the United States Environmental Protection Agency ("USEPA"), the Virginia Department of Environmental Quality, or other federal, state or local agency or authority, or any other entity or any individual, concerning any intentional or unintentional act or omission which has resulted or which may result in the Release of Hazardous Substances on or into the Property or otherwise relates to an Environmental Condition.

b. The Landowner covenants, represents and warrants to the City that, 1) the Landowner has received no Notice, 2) to the best of its knowledge and belief, the Landowner has not caused or permitted any Environmental Condition on or affecting the Property, and knows of no such Environmental Condition caused or permitted by any other person or entity, and 3) to the best of its knowledge and belief, the Landowner has not caused or permitted, and to the knowledge of the Landowner, no prior or current other owner, tenant, user, operator or other person or entity has caused or permitted, the Property to Release or contain, or to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process, Hazardous Substances or other dangerous or toxic substances or solid wastes. The Landowner further covenants, represents and warrants that there is no action, suit, proceeding, claim, investigation, citizen suit or review pending or threatened against or affecting the title to the Property. Should any notice of such an

action, suit, proceeding, claim, investigation or citizen suit be received, it will be immediately forwarded to the Office of the City Attorney of the City of Hampton, Virginia.

c. The Landowner covenants, represents and warrants that, to its knowledge, there are no wetlands, hazardous wastes, or endangered species which would prevent the City's allowed use of the Property.

9. **Risk of Loss.** Risk of loss or damage to the Property by fire, wind, storm, or other casualty, or other cause shall remain upon the Landowner until the Occupancy Agreement between the City and the Landowner is terminated in accordance with the terms and conditions thereof. In the event of substantial loss or damage to the Property before Settlement, the City shall have the option of either (i) terminating this Agreement, or (ii) affirming this Agreement, in which event the Landowner shall assign to the City all of the Landowner's rights under any policy or policies of insurance applicable to the Property. In the event of substantial loss or damage to the Property after Settlement but during the term of the Occupancy Agreement, the Landowner shall assign to the City all of the Landowner's rights under any policy or policies of insurance applicable to the Property.

10. **Legal and Equitable Enforcement of Agreement.**

a. In the event the consummation of the transactions contemplated herein fail to occur by reason of any default by the Landowner, the City shall have the right to seek all remedies available by law or in equity.

b. In the event the consummation of the transactions contemplated herein fail to occur by reason of any default of the City, except as specified in Paragraphs 2 and 7, the Landowner shall have as its sole remedy, the right to seek specific performance.

11. **Survival.** THE COVENANTS, AGREEMENTS, REPRESENTATIONS, WARRANTIES AND INDEMNITIES OF THE LANDOWNER CONTAINED IN THESE PARAGRAPHS WILL SURVIVE SETTLEMENT AND DELIVERY OF THE DEED.

12. **Entire Agreement/Modification/City Council Approval.** There have been no other promises, considerations or representations made which are not set forth in this Agreement. There may be no modification of this Agreement, except in writing, executed by the authorized representatives of the Landowner and the City. **This Agreement is subject to the formal approval of the City Council by a duly adopted resolution authorizing the acquisition of the Property.**

13. **Successors and Assigns/Miscellaneous.** The terms and provisions of this Agreement are binding upon and will inure to the benefit of the parties, their respective successors and assigns. To the extent any handwritten or typewritten terms herein conflict with, or are inconsistent with the printed terms hereof, the handwritten or typewritten terms shall control. Nothing contained in this Agreement shall be construed to confer upon any other party the rights of a third party beneficiary. The captions and headings of the sections contained herein are for the convenience of reference only and shall not be considered in any interpretation of the provisions of this Agreement. If any term, covenant, condition, or provision of this Agreement, or the application to any person or circumstance shall, at any time or to any extent be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall (except to the

extent such result is clearly unreasonable) not be affected thereby, and under such circumstances each term, covenant, condition and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law, insofar as such enforcement is not clearly unreasonable. This Agreement does not and shall not be construed to create a partnership, joint venture or any other relationship between the parties hereto except the relationship of seller and purchaser specifically established hereby. No official, representative or employee of the City of Hampton shall be personally liable to the Landowner or any successor in interest in the event of any default or breach by the City for any amount which may become due to the Landowner or successor or on any obligations under the terms of this Agreement.

14. **Governing Law/Venue.** This Agreement shall be deemed to be a Virginia contract and shall be governed by the laws of the Commonwealth of Virginia, and the parties hereto designate the Circuit Court of the City of Hampton as the proper venue for all litigation of issues relating to this Agreement.

15. **IRS Requirements.** In accordance with instructions by the Department of the Treasury, Internal Revenue Service, for Form 1099-S, the Landowner is required by Law to provide the City Attorney, 22 Lincoln Street, Hampton, VA 23669 with its correct taxpayer identification number. If the Landowner does not provide the City Attorney's Office with the Landowner's correct taxpayer identification number, the Landowner may be subject to civil or criminal penalties imposed by law. The Landowner will also provide the City with other documents necessary for the City to comply with State reporting requirements

Under the penalties of perjury, as the Landowner, I/we certify that the number(s) shown on this Agreement is/are my/our correct taxpayer identification number(s).

16. **Broker.** The City and the Landowner each warrant and represent to the other that each will be responsible for the payment of any real estate commission due to any broker or agent with which such party has contracted. Each party further agrees that it shall indemnify and save the other harmless against such claim by any such person arising from each party's own activities in this regard.

17. **Signatures of parties.** The following information must be provided on the signature lines below:

a. Where the Landowner is an individual or individuals, each person shall sign and print his/her name and include his/her taxpayer identification number.

b. Where the Landowner is a business, the authorized agent of the Landowner shall sign and print his/her name, provide his/her title, the taxpayer identification number of the business and, where necessary, a resolution authorizing the sale of the property.

c. Where any person holds a Power of Attorney for a Landowner, a copy of the Power of Attorney shall be attached and the person shall sign for the Landowner as his/her Attorney-in-fact.

18. **Ancillary Documents.** The City's authorized representative is hereby authorized, on behalf of the City, to execute any and all other documents necessary or appropriate to effectuate the transactions contemplated by this Agreement.

WITNESS the following signatures:

LANDOWNER:

Armond C. Crump
SSN # _____ Date: _____

113 Calthrop Neck Rd., Yorktown, VA 23693 PHONE # 868-6804 H, 329-4000 C.
MAILING ADDRESS

Samuel A. Crump
SSN # _____ Date: _____

113 Calthrop Neck Rd., Yorktown, VA 23693 PHONE # 817-5024
MAILING ADDRESS

Barbara E. Macario
SSN # _____ Date: _____

822 W. Bejiki Rd., Gwinn, MI 49841 PHONE # 906-360-2899
MAILING ADDRESS

THE CITY OF HAMPTON

By: _____ Date: _____
City Manager / Authorized Designee

Approved as to Legal Sufficiency:

Approved as to Content:

Chief Deputy City Attorney

Real Estate Manager