CITY COUNCIL
AGENDA
TUESDAY, APRIL 26, 2016

Work Session Agenda

4:30 PM – City Hall - 10th Floor Conference Room

Budget Worksession

Presenter: *Mayor Paul. D. Fraim*

5:30 PM

Break for Dinner

Health Needs Survey And Youth Art Project

Presenter: *Demetria Lindsay, Director of Public Health*

Council Interests

Documents: 04-26-16 COUNCIL INTERESTS.PDF

Agenda Overview

Presenter: *Marcus D. Jones, City Manager*

Short Term Rentals

Presenter: *Adam Melita, Deputy City Attorney and George Homewood, Director of Planning*

Closed Session

- Real Estate Matters

Additional Documents

Documents: 04-26-16 MINUTES OF CITY COUNCIL MEETING OF APRIL 12.PDF, 04-26-16 PENDING LAND USE ACTIONS.PDF, 04-26-16 TRAFFIC CONTROL SIGNS - ADDITIONAL INFORMATION.PDF

Announcement Of Meeting

Documents: 04-26-16 ANNOUNCEMENT OF MEETING.PDF

Formal Session

7:00 PM - Council Chambers, City Hall, 11th Floor

Prayer

Prayer to be offered by Councilman Paul R. Riddick, followed by the Pledge of Allegiance.

Public Hearings

PH-1

PUBLIC HEARING scheduled this day under the State law, public notice having been inserted in the local press by the City Clerk, on the application of **Brock Ventures, Inc.**, for an amendment to the future land use designation in the General Plan, *plaNorfolk2030*, from Institutional to Multifamily and for a change of zoning from IN-1 (Institutional) District to R- 13 (Moderately High Density Multi-Family) District on property located at **435 Virginia Avenue**.

(Passed by at the meeting of February 23, 2016)
(A request has been made to continue to May 24, 2016)

Documents: PH-1 PLAN AMENDMENT AND REZONING - 435 VIRGINIA AVE.PDF

PH-2

PUBLIC HEARING scheduled this day under the State law, public notice having been inserted in the local press by the City Clerk, to hear comments on a Lease Agreement between the City and the Virginia Opera Association, Inc., for certain premises being the **Harrison Opera House** located at **160 West Virginia Beach Boulevard**, Norfolk, Virginia.

Documents: PH-2 LEASE AGREEMENT WITH THE VIRGINIA OPERA ASSOCIATION INC..PDF

PH-3

PUBLIC HEARING scheduled this day under the State law, public notice having been inserted in the local press by the City Clerk, to hear comments on a Lease Agreement with **Grace's Tailor Shop, Inc.** for the lease of city owned property located at **130 Bank Street**.

Documents: PH-3 LEASE AGREEMENT WITH GRACES TAILOR SHOP INC..PDF

PH-4

PUBLIC HEARING scheduled this day under the State law, public notice having been inserted in the local press by the City Clerk, to hear comments on a Lease Agreement with **Corks and Caps, LLC** for the lease of city owned property located at **240 E. Main Street**.

Documents: PH-4 LEASE AGREEMENT WITH CORKS AND CAPS LLC.PDF

PH-5

PUBLIC HEARING scheduled this day under the State law, public notice having been inserted in the local press by the City Clerk, to hear comments on the conveyance of a **GEM Lot** to **DPT Construction, LLC**, on property located at **1409 Wilson Road**.

Documents: PH-5 CONVEYANCE OF GEM LOT - 1409 WILSON RD.PDF

PH-6

PUBLIC HEARING scheduled this day under the State law, public notice having

been inserted in the local press by the City Clerk, to hear comments on the conveyance of a **GEM Lot** to **Trustees of the Gethsemane Community Fellowship Baptist Church**, on property located at **606 Maltby Avenue**.

Documents: PH-6 CONVEYANCE OF GEM LOT - 606 MALTBY AVE.PDF

PH-7

PUBLIC HEARING scheduled this day under the State law, public notice having been inserted in the local press by the City Clerk, to hear comments on the conveyance of a **GEM Lot** to **Trustees of the Jay Investment Corporation**, on property located at **985 Parish Road**.

Documents: PH-7 CONVEYANCE OF GEM LOT - 985 PARISH RD.PDF

PH-8

PUBLIC HEARING scheduled this day under the State law, public notice having been inserted in the local press by the City Clerk, to hear comments on a Lease Agreement with **Rover Marine, Inc.** for the lease of city owned property located at **224 E. Main Street**.

Documents: PH-8 RENEWAL OF LEASE AGREEMENT WITH ROVER MARINE, INC..PDF

Regular Agenda

R-1

Letter from the City Manager and an Ordinance entitled, "An Ordinance permitting **433 Granby Street, LLC** to encroach into the right of way at **433 Granby Street** with signage," will be introduced in writing and read by its title.

Documents: R-1 ENCROACHMENT AT 433 GRANBY ST.PDF

R-2

Letter from the City Manager and an Ordinance entitled, "An Ordinance granting **JJB Financial, LLC** permission to encroach into the right of way at **345 Granby Street** approximately 109 square feet for the purpose of outdoor dining and approving the terms and conditions of the Encroachment Agreement," will be introduced in writing and read by its title.

Documents: R-2 ENCROACHMENT FOR OUTDOOR DINING - 345 GRANBY ST.PDF

R-3

Letter from the City Manager and an Ordinance entitled, "An Ordinance granting **Michael, LLC** permission to encroach into the right of way at **1231 W. Olney Road** approximately 162 square feet for the purpose of outdoor dining and approving the terms and conditions of the Encroachment Agreement," will be introduced in writing and read by its title.

Documents: R-3 ENCROACHMENT FOR OUTDOOR DINING - 1231 W OLNEY RD.PDF

R-4

Letter from the City Manager and an Ordinance entitled, "An Ordinance authorizing the City Manager to enter into a **Right of Entry Agreement** with the owners of certain parcels of property located around Lake Modoc for the purpose of a **Water Quality Retrofit Project**," will be introduced in writing and read by its title.

Documents: R-4 RIGHT OF ENTRY FOR WATER QUALITY RETROFIT PROJECT AT LAKE MODOC.PDF

R-5

Letter from the City Manager and an Ordinance entitled, "An Ordinance approving the terms and conditions of Safekeeping and Custody Agreement between the City of Norfolk and Virginia Cartographical Society, LC for the custody of a historical map collection and authorizing the City Manager to execute the **Safekeeping and Custody Agreement** on behalf of the City," will be introduced in writing and read by its title.

Documents: R-5 SAFEKEEPING AND CUSTODY AGREEMENT WITH VIRGINIA CARTOGRAPHICAL SOCIETY.PDF

R-6

Letter from the City Manager and an Ordinance entitled, "An Ordinance accepting an additional Grant Award of $294,197.20 from the **Virginia Department of Emergency Management** which includes $220,647.90 from the **Federal Emergency Management Agency**, $58,839.44 from the Commonwealth of Virginia and $14,709.86 as a cash match from the City through the **Hazard Mitigation Grant Program** for the City of Norfolk Floodproofing of Strickland and Jones Project and appropriating and authorizing the expenditure of the additional funds for the project," will be introduced in writing and read by its title.

Documents: R-6 FEMA HAZARD MITIGATION GRANT FUNDING.PDF

R-7

Letter from the City Manager and an Ordinance entitled, "An Ordinance accepting a Grant Award of up to $282,984.00 from the **Virginia Department of Behavioral Health and Development Services** through the Hampton-Newport News Community Services Board to Norfolk Community Services Board to provide permanent supportive housing to individuals in Eastern State Hospital able and eligible to live independently in the community, and appropriating and authorizing expenditure of grant funds," will be introduced in writing and read by its title.

Documents: R-7 GRANT AWARD FROM VIRGINIA DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENT SERVICES.PDF

R-8

Letter from the City Manager and an Ordinance entitled, "An Ordinance to repeal one subsection each of Sections 25-646, 653, and 654, and to amend and reordain Sections 25-646, 652, 653, 654 and 656 of the *Norfolk City Code, 1979* **SO AS TO** add one new speed limit, one new one-way street, two new yield intersections, fifteen new stop intersections, and three new trucks of one and one-half tons on certain streets prohibitions," will be introduced in writing and read by its title.

Documents: R-8 TRAFFIC CONTROL SIGNS - VARIOUS LOCATIONS (25).PDF

R-9

Letter from the City Manager and an Ordinance entitled, "An Ordinance approving a Deed of Easement for Pedestrian Access from Norfolk Outlets, LLC to the City of Norfolk, approving a Deed of Easement for Force Main from Norfolk Outlets, LLC to the City of Norfolk, approving a Lighting Maintenance Agreement between the City of Norfolk and Norfolk Outlets, LLC, approving a Lake Bank Maintenance Agreement between the City of Norfolk and Norfolk Outlets, LLC, authorizing the City Manager to accept a Deed of Dedication from the Economic Development

Authority of the City of Norfolk for the public roadway to be constructed at Lake Wright, authorizing the City Manager to accept a Special Warranty Deed from the Economic Development Authority of the City of Norfolk for the residual tract of land located West of the public roadway to be constructed at Lake Wright, and authorizing the City Manager to accept any and all easements and to enter into such easements, maintenance and other agreements as are required by the City of Norfolk for the Economic Development Authority of the City of Norfolk to close upon the sale of real property to Norfolk Outlets, LLC and as required by the **Site Development Plans for Norfolk Premium Outlets, Norfolk, Virginia**, dated April 6, 2016," will be introduced in writing and read by its title.

Documents: R-9 AUTHORIZATION AND APPROVAL OF VARIOUS EASEMENTS AND AGREEMENTS FOR NORFOLK PREMIUM OUTLETS.PDF

THE CITY OF NORFOLK

April 22, 2016

City Council;

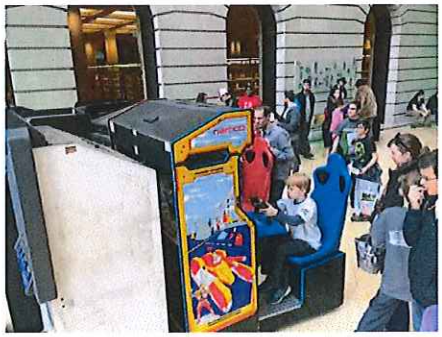
Today's memo includes information from the April 12th Council meeting. Highlights include:

- Landscaping Update
- Neighborhood Quality Efforts
- Short Term Rentals

The City recently received national recognition from the Government Finance Officers Association for the FY 2015 Budget Document. This award includes special recognition for performance measures included in the budget which demonstrate progress toward achieving goals and objectives.

We also climbed the rankings for having one of the best fleets in the country! 100 Best Fleets just announced the 2016 best fleets in America. Norfolk ranks #55 this year. Last year, we ranked #66.

Earlier this month, Slover Library transformed into a gamers paradise at Pixelfest. More than 4,600 visited Slover during the weekend – the largest attendance at Slover since opening weekend!



THE CITY OF NORFOLK

MEMORANDUM

TO:	City Council
FROM:	Lori A. Crouch, Corporate Communications Director
COPIES TO:	City Clerk, City Attorney
SUBJECT:	Council Interests
DATE:	April 22, 2016

Today's memo includes information and updates from the April 12, 2016 Informal City Council Session.

Neighborhood Quality Update: Staff conducted a comprehensive sweep of the following streets:

- Portview Av, from 1st View to Mason Creek
- A View Av, from Granby to Mason Creek
- W. Balview Av, from Granby to Mason Creek
- W. Seaview Av, from Granby to 1st View
- D View Av, from Granby to Tidewater
- W. Government Av, from Granby to Tidewater
- Statler St
- Capitol Av
- Lakeside Dr
- Dulwich Cres

The following enforcement actions took place and staff will follow-up to ensure these issues are corrected:

- 15 Tall Weed Grass
- 15 Trash And Debris
- 5 Code Enforcement Case
- 2 Residential Parking (1 parking ticket)
- 1 Inoperable Vehicle

Police Technology: The Norfolk Police Department is working on several technology upgrades that will remind an officer to turn on the body worn camera. The first effort will re-program the computer aided dispatch system to include a reminder to turn on body worn cameras when dispatched to calls for service. In addition, the Police are working with the Emergency Operations Center to integrate a reminder in radio dispatch procedures. Chief Goldsmith is currently reviewing new technology that will automatically turn on body worn cameras when officers complete tasks such as turning on their emergency lights, removing their weapon or opening the car door.

THE CITY OF NORFOLK

Bose Investigation: The Bose case remains an active investigation and all leads are being pursued. Norfolk Police is collaborating with other agencies. A Norfolk officer is assigned to the Federal Bureau of Investigation's Violent Crimes Task Force as part of this collaboration. In addition, Norfolk Police are utilizing various state and federal resources available to them.

Short Term Rentals: Staff will provide information on short term rentals during a presentation scheduled for Tuesday, April 26th.

Body Worn Cameras: The Office of Professional Standards maintains the discipline history of officers failing to activate their body worn cameras. The City's progressive discipline philosophy is followed to address these instances. In 2016, there have been 11 instances resulting in command counseling and 1 instance resulting in a letter of reprimand. No officer has been in violation more than 2 instances which would result in suspension.

Outreach Plans for New Employee Management System: Human Resources staff is scheduling several workshops beginning in June which will provide employees an opportunity to learn more about the time/absent management systems and payroll scheduling revisions. Staff is already sending messages about the improvements and efficiencies to employees.

High-Speed Internet: Staff will provide a comprehensive presentation to Council in May about efforts to expand and enhance high-speed internet in the City. Staff will also include an update on the COX franchise agreement review and renewal process.

Verizon Fios: Staff is scheduling a meeting with Verizon next week to discuss FIOS and other emerging technology for high speed data and cable that Verizon is currently exploring.

Verizon's goal with FIOS was to reach 18 million homes nationally. They were actively engaged in negotiations with several cities nationwide and in Virginia to bring FIOS to communities. When they reached the 18 million milestone in 2010, they ceased discussions on new installations and expansion into several cities including Norfolk, Alexandria, Falls Church, as well as Baltimore (city), Minneapolis, and Los Angeles. Nationally, although FIOS reaches 18 million homes, a vast majority of U.S. cities don't have FIOS available to them (see attached maps). In the cities where FIOS is offered, availability does not extend to all locations. For example, New York City has FIOS, but it is not available in Brooklyn and Manhattan.

Staff received notification via phone and e-mail from Verizon external affairs and/or engineering in 2010, 2012, 2013, and December 2015 that they have no plans to resume discussions with cities to expand FIOS at this time.

Code Enforcement Shifts: Neighborhood Development is evaluating several models for alternative shifts and expects to launch in pilot program for this summer. We think there is value in code enforcement personnel meeting with residents while they are at home. This provides an opportunity to build relationships which would encourage volunteer compliance. We currently have an Emergency On-Call Inspector who is available 24/7 that reports to fires, demolish, board-up etc.

THE CITY OF NORFOLK

Landscaping Update: Parks and Urban Forestry staff are performing the spring cleanup of the medians and triangles at the Military Highway-Little Creek Road intersection. The spring cleanup includes pruning, weeding and mulching of the bed areas. Staff will also remove two juniper plantings causing sight obstructions for left turns from Little Creek to Military Hwy/Pythian Road. Crews will complete the work the first week of May.

Police Officer Standards: The police department has demonstrated an authentic commitment to transparency and accountability to build trust and communication as well as collaboration with our citizens. The Chief and command staff have lead proactive measures in preventing misconduct through the appropriate training to include fair and impartial policing training as well as procedural justice and ethics training. Norfolk Police has zero tolerance for police misconduct and takes affirmative steps to remove those officers engaged in such activity.

Fort Norfolk Redevelopment: City Council on April 12 approved (R-15) a Downtown Certificate to permit the substantial rehabilitation of the existing 4 story historic warehouse; converting the vacant warehouse into 57 dwelling units. Neighborhood Quality (Code Enforcement) along with Norfolk Police will continue to monitor for any code violations.

City of Norfolk

Inter Department Correspondence Sheet

TO: Members of Council

FROM: City Clerk

COPIES TO:

SUBJECT: Minutes of City Council Meeting

April 22, 2016

Attached are the minutes from the City Council meeting held on April 12, 2016.

R. Breckenridge Daughtrey

NORFOLK, VIRGINIA

BUSINESS MEETING OF COUNCIL

TUESDAYAPRIL 12, 2016

President Fraim called the meeting to order at 5:05 p.m. with the following members present: Ms. Graves, Ms. Johnson, Mr. Protogyrou, Mr. Riddick, Mr. Smigiel, Dr. Whibley and Mr. Winn.

He thereupon called for Council Interests.

A. COUNCIL INTERESTS

1. Councilman Winn:

   - Restated an earlier request for locating a boat launching facility in Ocean View.
   - Referencing the building on Rader Street that was burned out and the building on Princess Anne Road, he asked if they were moving through the system and would like to get an update on both buildings.
   - Ms. Johnson stated that she responded to the email in reference to the cigar factory and will meet with the person tomorrow. She stated that she will copy councilmembers on the latest update.
   - Asked when the Cox Cable agreement will expire and asked if they could meet with Verizon about bringing FIOS to Norfolk.

Manager Jones stated that they are in the process of negotiating an agreement with Cox Cable and that some of questions will be addressed in his budget presentation and then he can schedule a full presentation if they still feel the need.

   - The fire station in Meadowbrook is backed up a couple of months and selection of a design build team has been postponed, he asked what is the schedule for that.
   - In response to complaints made about the airbnb and the event house in Ocean View, he stated that they tend to negatively impact the neighborhood and asked the administration for a presentation.

Mr. Protogyrou stated that they need a 24-hour hotline number for citizens to call after hours and weekends for situations like that.

Mayor Fraim asked the administration to schedule an hour at the next meeting to discuss this.

2. Councilman Riddick:

   - Asked if they can impose a fine on police officers who are equipped with body cameras and don't turn them on.
   - Expressed concern with the recent death at the regional jail and the deplorable condition of the cells. He asked for an update on the regional jail after the budget has been adopted.

3. Councilman Protogyrou:

   - With regard to Balview Avenue and several streets behind the Ocean View shopping center, he stated that it requires more than just a police presence and asked for increased code enforcement and narcotics interdiction in those areas.
   - With regard to the Joseph Bose matter, he asked if they are at a point now where they have DNA ready for a forensic evaluation and if they need help beyond what they have, they are ready to go to the feds at this point. They also need assistance to go back to witnesses to reevaluate the case at state or federal level.

4. Councilwoman Johnson:

   - Asked the administration to get the word out early about registration for pre-kindergarten.
   - Asked the administration to provide employee training on the new payroll system.
   - Asked for a presentation on property values and assessments and also the process for assessing properties and what neighborhoods can do to bring up their property values.

5. Vice Mayor Graves:

   - Asked the administration to look into staggering the hours of operation for code enforcement officers and also look at supplying them with equipment to write summonses.
   - Forwarded an email to the manager regarding wheelchair signs.
   - In response to complaints about police brutality within the department, she stated that we need to make sure that our officers are operating at the same level of professionalism all the time and would encourage an atmosphere where officers would report other officers doing wrong.

6. Councilman Smigiel:

   - Expressed concern with Cox Cable pricing being out of control because they have no competition and stated that an investigation into price gouging need to be done.
   - Stated that he has been working with staff on the Balview Avenue situation and bringing back the code sweeps program.
   - Asked for the medians on Military Highway and Little Creek Road to be addressed, noting that they trimmed the trees but leaves, trash and debris is still in between the bushes.

B. MEDICAL HUB OF THE REGION

Peter Chapman, Deputy City Manager, stated Norfolk is the medical hub of the region offering a broad and diverse group of businesses with a primary focus on healthcare and life sciences. There is a significant potential to contribute to new business startups and expansions through commercialization of technology. In terms of healthcare and life sciences institutions in Norfolk, Sentara is the largest private sector employer accounting for 16 percent of civilian jobs in this market. It employs over 800 healthcare-related companies in Norfolk many of which are tied to Sentara. In 2015-2016, Sentara Norfolk General was ranked by U.S. News and World Report as one of the top 50 hospitals for cardiology and heart surgery. Sentara Leigh employs roughly 3,200 with over 80 medical and life science-related businesses within a one-mile radius of that campus. Bon Secours employs over 1,000 individuals.

There are a number of medical research centers that are significant in terms of healthcare and life sciences infrastructures. One adjunct of the medical research infrastructure are the diagnostic centers. An important part of the infrastructure is the micro and nanotechnology cleaning room at Norfolk State University. In terms of commercialization of technologies, CIRS deals in the world of phantom technology and tissue simulation with an outgrowth of research taking place at ODU, specializing in replacement of tendons and ligaments. Within the realm of economic development, the focus is on retention of existing institutions and businesses via systematic outreach and attracting new healthcare partners.

C. SENTARA AND MEDICAL CAMPUS

Sandy Harris, Chairman of the Sentara Board, reported as follows:

- Sentara employs 30,000 people, the fourth largest employer in the state.
- Contributed $277 million in indigent health care last year.
- A strategic plan is in place to transform Sentara Norfolk General into a Quaternary Care institution.

Kurt Hofelich, Corporate Vice President and President of Sentara Norfolk General Hospital, reported as follows:

- Sentara's goal is to move Norfolk General into quaternary care- a higher level, more specialized level of care.
- Some quaternary services are being provided, such as fetal surgery, a structural heart program that includes left appendage closure device placement, a CardioMems device, transcatheter aortic valve replacement and a Minimally Invasive Neurosurgery Spine Center.
- Sentara is becoming a medical destination center with patients coming from up to 19 states.
- SNGH is now undergoing an expansion to grow this program.

Howard Kern, President and CEO of Sentara Healthcare, reported, reviewed the development overtime if Norfolk General Hospital and the Sentara Healthcare System including construction of additions to Norfolk General and the new Sentara Leigh Hospitals.

NORFOLK, VIRGINIA

ACTION OF THE COUNCIL

CITY COUNCIL MEETING

TUESDAY, APRIL 12, 2016 – 7:00 P.M.

President Fraim called the meeting to order at 7:10 p.m.

The opening prayer was offered by Vice Mayor Angelia Williams Graves, followed by the Pledge of Allegiance.

The following members were present: Mrs. Graves, Mrs. Johnson, Mr. Protogyrou, Mr. Riddick, Mr. Smigiel, Dr. Whibley, Mr. Winn and Mr. Fraim.

President Fraim moved to dispense with the reading of the minutes of the previous meeting.

Motion adopted.

Yes: Graves, Johnson, Riddick, Protogyrou, Smigiel, Whibley, Winn and Fraim.

No: None.

CEREMONIAL MATTERS

1. President Fraim read a proclamation proclaiming the month of **April, 2016 as Child Abuse Prevention Month**. Steve Hawks, Director of Human Services, accepted the proclamation. Denise Gallop, Assistant Director, Melynda Ciccotti, Executive Director, Champions for Children/Prevent Child Abuse Hampton Roads, Al Steward, Program Manager, Child Protective Services, Pam Wong, Family Services Supervisor, Early Prevention Unit and Jan Callaghan, Public Information Officer, were present. Mr. Steward and Ms. Wong addressed council on the issue of child abuse and thanked them for the proclamation.

2. President Fraim read a Proclamation proclaiming the week of **April 10th** thru **April 15th** as **Crime Victims' Rights Week**. The proclamation was accepted by Heather Fuss, Assistant Director of Victim/Witness Assistance Program.

INVITATION TO BID

IB-1 **INVITATION TO BID** scheduled this day pursuant under State Law, public notice having been inserted in the local press by the City Clerk to accept bids for a **Long Term Garage Parking Agreement**, with a term of approximately 11.5 years, with the option to extend the term for up to four (4) additional periods of five (5) years each, for 165 parking spaces in the **City of Norfolk** in **Fountain Park Garage** located at **130 Bank Street** and Commercial **Place Garage** located at **520 E. Main Street**.

One bid was submitted by **Norfolk Southern Corporation** that was opened, numbered and read.

Thereupon, An Ordinance entitled, "An Ordinance accepting the Bid submitted by **Norfolk Southern Corporation** for a Long Term Garage Parking Agreement, with a term of approximately 11.5 years, with the option to extend the term for up to four (4) additional periods of five (5) years each, for the Lease of 165 parking spaces in the City of Norfolk in Fountain Park Garage located at 130 Bank Street and Commercial Place Garage located at 520 E. Main Street," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective May 13, 2016.

Yes: Graves, Johnson, Riddick, Protogyrou, Smigiel, Whibley, Winn and Fraim.

No: None.

PUBLIC HEARINGS

PH-1 **PUBLIC HEARING** scheduled this day under the State law, public notice having been inserted in the local press by the City Clerk, to hear comments on a **Performance Agreement** with the **Economic Development Authority of the City of Norfolk and Norfolk Southern Corporation**.

Thereupon, an Ordinance entitled, "An Ordinance authorizing the City to enter into a **Performance Agreement with the Economic Development Authority of the City of Norfolk and Norfolk Southern Corporation,**" was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Protogyrou, Smigiel, Whibley, Winn and Fraim.

No: None.

PH-2 **PUBLIC HEARING** scheduled this day under the State law, public notice having been inserted in the local press by the City Clerk, on the application of **Andalousi** for a change of zoning from R-8 (Single-Family) District to Conditional C-1 (Limited Commercial) District on property located at **2729 Bowdens Ferry Road.**

(PASSED BY AT THE MEETING OF MARCH 22, 2016)

The applicant requested this matter be continued to May 10, 2016 to allow time to arrange for parking.

ACTION: Continued to May 10, 2016.

Yes: Graves, Johnson, Riddick, Protogyrou, Smigiel, Whibley, Winn and Fraim.

No: None.

PH-3 **PUBLIC HEARING** scheduled this day under the State law, public notice having been inserted in the local press by the City Clerk, to hear comments on the closing, vacating and discontinuing a portion of **Faquier Street** from the northern line of **Bellamy Avenue**.

John Padgett, 101 West Main Street, was present to answer questions.

Thereupon, an Ordinance entitled, "An Ordinance closing, vacating and discontinuing a portion of **Faquier Street** from the northern line of **Bellamy Avenue** 100 feet, more or less, northeastwardly to its terminus, and authorizing the conveyance to the abutting property owner or owners of any interest the city may have in the said portion of **Faquier Street**," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective May 13, 2016.

Yes: Graves, Johnson, Riddick, Protogyrou, Smigiel, Whibley, Winn and Fraim.

No: None.

PH-4 **PUBLIC HEARING** scheduled this day under the State law, public notice having been inserted in the local press by the City Clerk, to hear comments on a **Lease Agreement** with the **Girl Scout Council** of **Colonial Coast** on property located at **8420 Granby Street**.

Thereupon, an Ordinance entitled, "An Ordinance approving a **Lease Agreement** with the **Girl Scout Council of Colonial Coast** for the Lease of the land, buildings and improvements on City property located at **8420 Granby Street**," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective May 13, 2016.

Yes: Graves, Johnson, Riddick, Protogyrou, Smigiel, Whibley, Winn and Fraim.

No: None.

PH-5 **PUBLIC HEARING** scheduled this day under the State law, public notice having been inserted in the local press by the City Clerk, to hear comments on the conveyance to **Jeanne Barefield and Katherine Barefield Metzgar** on property located at **6049 Lake Terrace Circle**.

Thereupon, an Ordinance entitled, "An Ordinance authorizing the conveyance to **Jeanne Barefield** and **Katherine Barefield Metzgar** of a certain parcel of property located adjacent to **6049 Lake Terrace Circle** for the total sum of $20,000.00 in accordance with the terms and conditions of the **Purchase and Sale Agreement**," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective May 13, 2016.

Yes: Graves, Johnson, Riddick, Protogyrou, Smigiel, Whibley, Winn and Fraim.

No: None.

PH-6 **PUBLIC HEARING** scheduled this day under the State law, public notice having been inserted in the local press by the City Clerk, to hear comments on the conveyance of a **GEM Lot** to **Jay Investment Corporation**, on property located at **1400 Marsh Street**.

Thereupon, an Ordinance entitled, "An Ordinance authorizing the conveyance to **Jay Investment Corporation** of a certain parcel of property located at **1400 Marsh Street** for the total sum of $36,600.00 in accordance with the terms and conditions of the **Conveyance Agreement**; and authorizing the release of the City's right of reverter upon certain conditions," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective May 13, 2016.

Yes: Johnson, Riddick, Protogyrou, Smigiel, Whibley, Winn and Fraim.

No: None.

Abstained: Graves.

Mr. Protogyrou departed following the vote on PH-6.

REGULAR AGENDA

R-1 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting a **Special Exception** authorizing the operation on an eating and drinking establishment named **'California Burrito'** on property located **at 319 Granby Street, Suite 319**," was introduced in writing and read by its title.

Miguel Roldan, the applicant, 319 Granby Street, was present to answer questions.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-2 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting a **Special Exception** to permit the operation of a **Day Care Home** known as **'Christy's Day Care'** on property located at **414 33rd Street**," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-3 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting a **Special Exception** to permit the operation of a **Day Care Home** known as **'Marcelle Checkley Homecare'** on property located at **533 34th Street**," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-4 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting a **Special Exception** authorizing the operation on an eating and drinking establishment named **'FMC Garden Café'** on property located at **5511 Faris Street**," was introduced in writing and read by its title.

Brandon Morrison, the applicant, 5511 Faris Street, was present to answer questions.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-5 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting a **Special Exception** to operate a used merchandise sales establishment named **'NSJ Foundation'** on property located at **953 North Newtown Road**," was introduced in writing and read by its title.

Dr. Orin Gill, the applicant, 905 Churchill Drive, Chesapeake, VA, was present to answers questions.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-6 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting a **Special Exception** to permit the operation of a **Commercial Drive-Through** for commercial business, not yet named, on property located at **7813 Shore Drive**," was introduced in writing and read by its title.

Ellis James, 2021 Kenlake Place, expressed his concerns over the wording of this application and stated that it was hard to know what is correct.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No. None.

R-7 Letter from the City Manager and the following two Ordinances:

An Ordinance entitled, "An Ordinance granting a **Special Exception** authorizing the operation of an eating and drinking establishment named **'The Dirty Buffalo'** on property located at **4012 Colley Avenue**," was introduced in writing and read by its title.

Russell Gilbert, the applicant, 211 Sinclair Street, was present to answer questions.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-7A An Ordinance entitled, "An Ordinance granting a **Special Exception** authorizing the operation of a commercial recreation center known as **'The Dirty Buffalo'** on property located at **4012 Colley Avenue**," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-8 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting a **Special Exception** authorizing the operation of an eating and drinking establishment named **'Noodles & Company'** on property located at **1081 North Military Highway**," was introduced in writing and read by its title.

Steve Stritzl, the applicant, 1081 Military Highway, was present to answer questions.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-9 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting a **Special Exception** to permit the alternative signage for **'The Main'** on property located at **100 and 120 East Main Street**," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-10 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting a **Special Exception** authorizing the operation of an eating and drinking establishment named **'Tinto Wine & Cheese, Etc.'** on property located at **999 Waterside Drive, Suite 113**," was introduced in writing and read by its title.

Crystal Stump, the consultant, 1807 South Church Street, Smithfield, VA, was present to answer questions.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-11 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting a **Special Exception** authorizing the operation of an entertainment establishment with alcoholic beverages known as **'The Granby Social Club'** on property located at **763 Granby Street, Suite 765**," was introduced in writing and read by its title.

Guy Deron-On Court, the applicant, 330 West Brambleton Avenue, Apt 715, was present to answer questions.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-12 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting a **Special Exception** to permit the operation of a tattoo parlor named **'Artisan Body Piercing'** on property located at **5720 Hoggard Road, Suite B**," was introduced in writing and read by its title.

Katie Schemmel, 714 Wingfield Avenue, Chesapeake, VA, was present to answer questions.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-13 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting a **Special Exception** to permit the operation of a **Commercial Drive-Through** for **'Dunkin Donuts'** on property located at **8410 Hampton Boulevard**," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-14 Letter from the City Manager and A Resolution entitled, "A Resolution requesting that the **City Planning Commission** undertake to prepare an amendment to the City's General Plan, *planorfolk2030*, **SO AS TO** adopt and incorporate a **'Sand Management Plan'**," was introduced in writing and read by its title.

Ellis James, 2021 Kenlake Place, commented that he supports this application.

Vic Yurkovic, 1816 East Ocean View Avenue and Thelma Drake, thanked Council for taking this action to replenish sand on the Ocean View beaches.

ACTION: The Resolution as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-15 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting a **Downtown Development Certificate** to permit the renovation of an existing, historic building for use as a multi-family residential dwelling on property located at **519 Front Street**," was introduced in writing and read by its title.

James Reidy, the applicant 515 Wilder Drive, Virginia Beach, VA, was present to answer questions.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-16 Letter from the City Manager and an Ordinance entitled, "An Ordinance authorizing the dedication of certain city owned property as a public street so as to extend the existing street known as **Pritchard Street**," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-17 Letter from the City Manager and an Ordinance entitled, "An Ordinance permitting **Prakoon, LLC** to encroach into the right-of-way at **417 West 21st Street** with signage," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-18 Letter from the City Manager and an Ordinance entitled, "An Ordinance permitting **Prakoon, LLC** to encroach into the right-of-way at **419 West 21st Street** with signage," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-19 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting **456 Granby Street, LLC** permission to encroach at **456 Granby Street** into the rights of way of **Granby Street** and **Charlotte Street** approximately 440 square feet for the purpose of outdoor dining and approving the terms and conditions of the **Encroachment Agreement**," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-20 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting **Sigraz, LLC** permission to encroach at **219 Granby Street** into the rights of way of **Granby Street** and **Brooke Avenue** approximately 413 square feet for the purpose of outdoor dining and approving the terms and conditions of the **Encroachment Agreement**," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-21 Letter from the City Manager and an Ordinance entitled, "An Ordinance authorizing the City Manager to accept funds from the **Commonwealth of Virginia** for the purpose of enabling the **Nauticus Foundation** to purchase **Schooner Virginia**, approving a **Grant Agreement** between the **City of Norfolk** and the **Nauticus Foundation**, appropriating funds as contemplated by the terms of the Grant Agreement, and authorizing the City Manager to execute the Grant Agreement on behalf of the City," was introduced in writing and read by its title.

Stephen Kirkland, Director of Nauticus, was present to answer questions.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-22 Letter from the City Manager and an Ordinance entitled, "An Ordinance accepting a grant award to the City of up to $145,000 per year for five (5) years beginning with **Fiscal Year 2016** from the **Virginia Department of Behavioral Health and Developmental Services** and appropriating and authorizing the expenditure of the grant funds by the City to prevent prescription drug abuse and heroin overdose in youths and young adults," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-23 Letter from the City Manager and an Ordinance entitled, "An Ordinance authorizing an amendment to **Lease** between **WTC Financial Associates, LLC, 435 East WTC, LLC** and the City of Norfolk for a portion of that certain property located at **101 West Main Street, Suite 100** and authorizing the City Manager to execute the Amendment on behalf of the City of Norfolk," will be introduced in writing and read by its title.

Karen Rudd, Manager, Public Arts Commission, was present to answer questions.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Riddick, Smigiel, Whibley, Winn and Fraim.

No: None.

R-24 Letter from the City Manager and an Ordinance entitled, "An Ordinance to amend the **Waterside Lease** and **Grant Agreement**," will be introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective April 12, 2016.

Yes: Graves, Johnson, Smigiel, Whibley, Winn and Fraim.

No: Riddick.

NEW BUSINESS

1. Tanterrian Taylor, 5920 Poplar Hall Drive, Apt. 304, informed Council that the wheelchair signs that were discussed on August 13, 2015, have not been installed across Military Highway and other busy intersections.

2. Danny Lee Ginn, 3844 Dare Circle, expressed concern that his comments to the city council in the minutes have not been comprehensive enough in contact.

THE CITY OF NORFOLK
CITY PLANNING

MEMORANDUM

TO:	City Council
THROUGH:	Marcus D. Jones, City Manager
FROM:	George M. Homewood, AICP, CFM, Planning Director
COPIES TO:	City Attorney, City Clerk
SUBJECT:	Pending Land Use Actions
DATE:	April 22, 2016

Attached for your review is the Pending Land Use Report, identifying applications received from April 6, 2016 through April 19, 2016. The report reflects items that are tentatively scheduled to be heard at the April 25, 2016 Architectural Review Board and the May 26, 2016 City Planning Commission meetings. In an effort to provide advance notice, this report is prepared prior to City Council meetings. No action is required on this report.

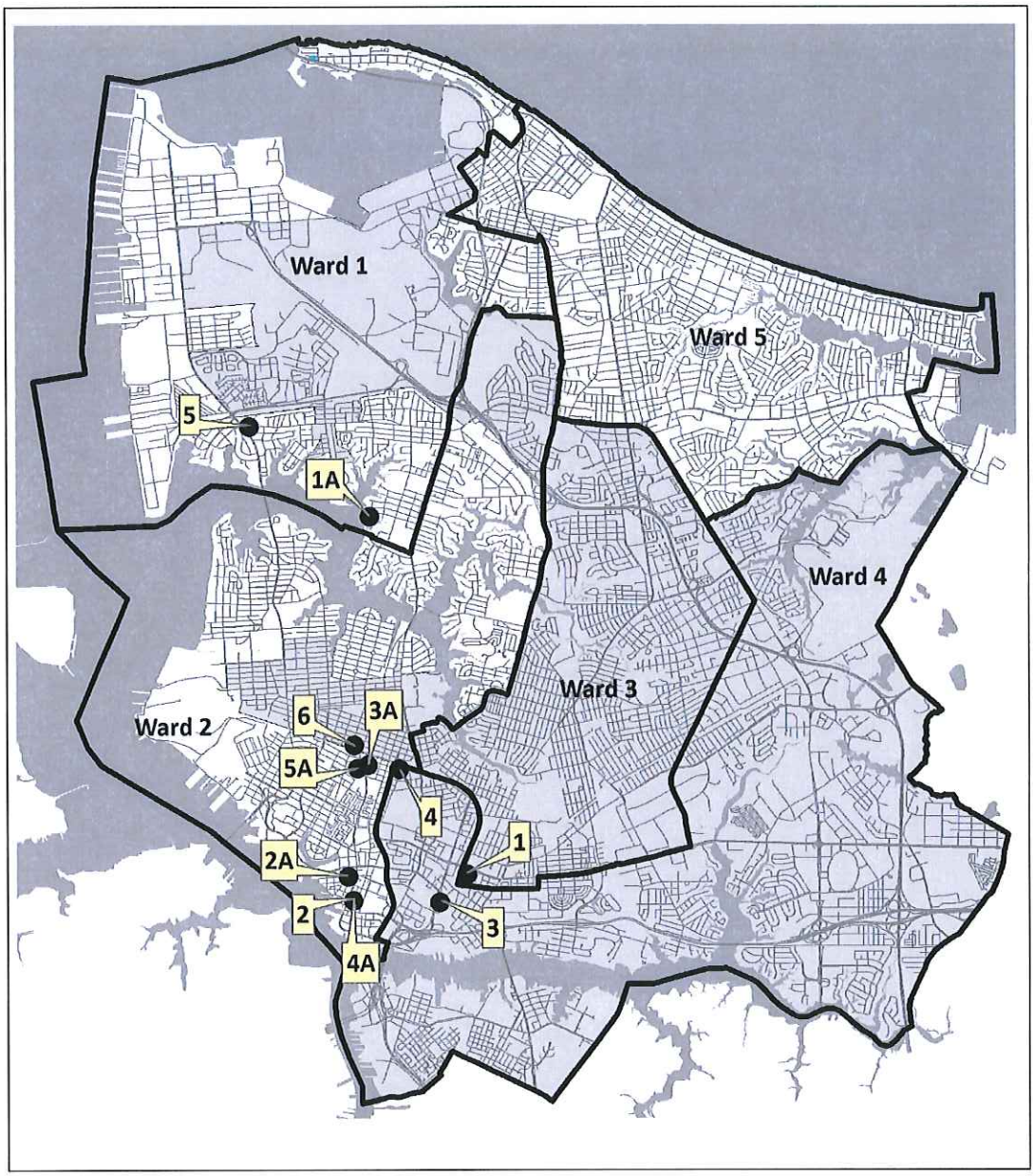
If you have any questions about these items, please contact me.

Architectural Review Board – April 25, 2016

Number	Applicant	Location	Request	Ward	SW	Neighborhood
1A	Commonwealth Preservation	6651 Talbot Hall Court	Landmark Designation	1	6	Talbot Park
2A	Robyn Thomas	243 W Bute Street	Storefront renovation	2	6	West Freemason
3A	WPA	240 W 21st Street	Sign encroachment	2	6	Ghent
4A	Ciniva	251 Granby Street	Business sign	2	6	Downtown
5A	Jessy's Taco Bistro	328 W 20th Street	Sign & lights encroachment	2	6	Ghent

City Planning Commission – May 26, 2016

Number	Applicant	Location	Request	Ward	SW	Neighborhood
1	NRHA	Portions of May Avenue & Unnamed Lane	Street closure	3	7	Central Brambleton
2	Tiffany Kidwell-Gaylord	257 Granby Street	Special exception for the sale of alcohol for off-premises consumption	2	6	Downtown
3	ForKids	630-660 Tidewater Drive	Change of zoning from C-2 (Corridor Commercial) to IN-1 (Institutional) district	4	7	South Brambleton
4	The Monument Companies	210 E 22nd Street	Granby Development Certificate	4	7	N/A
5	Starbucks	7600 Hampton Boulevard	Special exception to operate a commercial drive-through	1	6	Meadowbrook
6	Work Program Architects	429 W 24th Street	Special exception to operate an automobile storage yard	2	7	Park Place



Pending Land Use Actions
APRIL 6 - APRIL 19

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Superwards
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This map is for graphic purposes only.

Map compiled, designed and produced by the Department of City Planning.

THE CITY OF NORFOLK
PUBLIC WORKS

MEMORANDUM

TO: City Council

FROM: David Ricks, Director of Public Works

CC TO: Marcus D. Jones, City Manager; Ronald H. Williams, Jr., Deputy City Manager Richard Broad, Assistant Director; Rob Brown, City Transportation Engineer

SUBJECT: Traffic Control Signs – Additional Information

DATE: April 26, 2016

On the April 26, 2016 regular agenda, City Council will be reviewing an ordinance authorizing the change of speed limit on Military Highway, one-way street of Magazine Lane, fifteen new stop signs within the City and three new truck restrictions. These agenda items are being submitted in response to requests from residents and civic leagues concerned with the speed levels of traffic, neighborhood safety and intersection approach sight visibility in neighborhoods.

The change of speed limit along Military Highway is recommended by the Division of Transportation as a measure to improve traffic flow and safety in conjunction with the new Continuous Flow Intersection currently under design for the Military Highway and Princess Anne Road intersection. Based on the new intersection design and approach maneuvers onto the left turn lanes, the division recommends the reduction of speed limit from 45 to 40 miles per hour on Military Highway from Raby Road to Robin Hood Road. (Map 1)

At request of Downtown Norfolk Council and Arts District businesses, the Division of Transportation investigated measures to help improve traffic flow conditions and increase traffic safety within the Arts District. Based on several meetings with area businesses and residents, the division is recommending that Magazine Lane be changed from two-way traffic to one-way traffic in the southbound direction from W. Wilson Avenue to W. Olney Road. (Map 2)

The measure has support from Downtown Norfolk Council.

At the request of the Elizabeth Park Civic League the Division of Transportation investigated measures to help increase traffic safety at the Pine Grove Avenue and Huntsman Road intersection. Based on the divisions review of the intersection, yield sign control is recommended at the intersection. (Map 2)

The measure has written support from the Elizabeth Park Civic League.

At the request of the Eastbeach Home Owners Association the Division of Transportation investigated measures to help increase traffic safety at the Pleasant Avenue intersection with Pleasant Avenue Park. Based on the divisions review of the intersection, yield sign control is recommended at the intersection. (Map 2)

The measure has written support from the Eastbeach Home Owners Association.

At the request of Hampton Roads Transit the Division of Transportation investigated measures to help increase traffic safety at the intersections of 13th Street at Armistead Avenue, 14th Street at Armistead Avenue and
16th Street at Armistead Avenue. Based on the divisions review of the intersections, increased development and traffic generating businesses, stop sign control is recommended at the intersections. (Map 3)

At the request of the Freemason Street Area Association the Division of Transportation investigated measures to help increase traffic safety within the neighborhood. Based on the review of the area, the division recommends the installation of stop sign control on Botetourt Street at College Place, College Place at Yarmouth Street and Duke Street at W Freemason Street. (Maps 3 & 4)

These measures have written support from the Freemason Street Area Association.

At the request of the Chelsea Area Business Association the Division of Transportation investigated measures to help increase traffic and pedestrian safety within the area. Based on the review of the area, the division recommends the installation of all-way stop sign control at the intersection of Claremont Avenue and Raleigh Avenue and stop sign control on W Olney Road at Orapax Street. (Map 3)

These measures have written support from the Chelsea Area Business Association.

At the request of the Camellia Gardens Civic League the Division of Transportation investigated measures to help increase traffic safety at the Dominion Avenue at Camellia Road and Ridgefield Drive at Camellia Road intersections. Based on the review of the intersections, the Division of Transportation recommends installation of stop sign control on Dominion Avenue at Camellia Road and on Ridgefield Drive at Camellia Road. (Map 5)

These measures have written support from the Camellia Gardens Civic League.

At the request of residents of the Bayview neighborhood, the Division of Transportation investigated measures to help increase traffic safety at the E Balview Boulevard at Warwick Avenue and Woronoca Avenue at Atlans Street intersections. Based on the review of the intersections, the Division of Transportation recommends installation of stop sign control on E. Balview Boulevard at Warwick Avenue and on Woronoca Avenue at Atlans Street. (Maps 4 & 5)

These measures have written support from the Bayview Civic League.

At the request of residents of the Brentwood neighborhood, the Division of Transportation investigated measures to help increase traffic safety at the intersection of Glade Road at Alma Drive. Based on the review of the intersection, the Division of Transportation recommends installation of stop sign control on Glade Road at Alma Drive. (Map 4)

There is currently no active civic league in the area.

At the request of the Shadywood East Civic League the Division of Transportation investigated measures to help increase traffic safety at the intersection of Lois Lane at Edward Street. Based on the review of the intersection, the Division of Transportation recommends installation of stop sign control on Lois Lane at Edward Street. (Map 4)

This measure has written support from the Shadywood East Civic League.

At the request of residents of the Estabrook neighborhood, the Division of Transportation investigated measures to help improve the quality of life within the neighborhood. Residents that live on Buckingham Street, Henrico Street and Nottaway Street are experiencing an increased level of truck traffic on their streets. The trucks are destined to a nearby industrial area located west of Chesapeake Boulevard. Based on the review of the area, the Division of Transportation recommends installation of No Through Trucks, 1 ½ Tons and over on the streets. Truck traffic can continue to utilize Amherst Street which is a direct route to the industrial area. (Map 5)

These measures have written support from the Estabrook Civic League.

The Department of Public Works follows well developed, nationally recognized guidelines to assess traffic control sign requests. Upon receiving a request for traffic control devices, Division of Transportation staff analyzes the request and conducts a field investigation. The purpose of the investigation and analysis is to ensure adherence with Manual on Uniform Traffic Control Devices (MUTCD) regulations and to determine if the installation of the requested traffic control sign(s) is warranted.

CITY OF NORFOLK
OFFICE OF THE MAYOR

PAUL D. FRAIM
MAYOR

April 22, 2016

The Honorable Angelia Williams Graves
The Honorable Mamie B. Johnson
The Honorable Andrew A. Protogyrou
The Honorable Paul R. Riddick
The Honorable Thomas R. Smigiel, Jr.
The Honorable Theresa W. Whibley
The Honorable Barclay C. Winn

Ladies and Gentlemen:

Pursuant to Section 12 of the City Charter, I hereby call a special meeting of the Council to meet at 4:30 P.M., April 26, 2016, in the 10th floor conference room at City Hall for a Business Meeting.

Thank you,

Paul D. Fraim
Mayor

cc: Mr. Marcus Jones, City Manager
Mr. Bernard A. Pishko, City Attorney
Mr. R. Breckenridge Daughtrey, City Clerk

810 Union Street • Suite 1001 • Norfolk, Virginia 23510 • (757) 664-4679 • (757) 441-2909 • paul.fraim@norfolk.gov

CITY OF NORFOLK
OFFICE OF THE MAYOR

Paul D. Fraim
Mayor

April 22, 2016

The following meetings will take place on Tuesday, April 26, 2016:

1. 4:30 P.M. Council to assemble in the 10th floor conference room at City Hall for a Business Meeting.

2. 7:00 P.M. Regular Council Meeting.

810 Union Street • Suite 1001 • Norfolk, Virginia 23510 • (757) 664-4679 • (757) 441-2909 • paul.fraim@norfolk.gov

NORFOLK, VIRGINIA

DOCKET FOR THE COUNCIL

TUESDAY, APRIL 26, 2016 – 7:00 P.M.

Prayer to be offered by Councilman Paul R. Riddick, followed by the Pledge of Allegiance.

PUBLIC HEARINGS

PH-1 **PUBLIC HEARING** scheduled this day under the State law, public notice having been inserted in the local press by the City Clerk, on the application of **Brock Ventures, Inc.**, for an amendment to the future land use designation in the General Plan, *plaNorfolk2030*, from Institutional to Multifamily and for a change of zoning from IN-1 (Institutional) District to R-13 (Moderately High Density Multi-Family) District on property located at **435 Virginia Avenue**.

(Passed by at the meeting of February 23, 2016)
(A request has been made to continue to May 24, 2016)

PH-2 **PUBLIC HEARING** scheduled this day under the State law, public notice having been inserted in the local press by the City Clerk, to hear comments on a Lease Agreement between the City and the Virginia Opera Association, Inc., for certain premises being the **Harrison Opera House** located at **160 West Virginia Beach Boulevard**, Norfolk, Virginia.

PH-3 **PUBLIC HEARING** scheduled this day under the State law, public notice having been inserted in the local press by the City Clerk, to hear comments on a Lease Agreement with **Grace's Tailor Shop, Inc.** for the lease of city owned property located at **130 Bank Street**.

PH-4 **PUBLIC HEARING** scheduled this day under the State law, public notice having been inserted in the local press by the City Clerk, to hear comments on a Lease Agreement with **Corks and Caps, LLC** for the lease of city owned property located at **240 E. Main Street**.

PH-5 **PUBLIC HEARING** scheduled this day under the State law, public notice having been inserted in the local press by the City Clerk, to hear comments on the conveyance of a **GEM Lot** to **DPT Construction, LLC**, on property located at **1409 Wilson Road**.

PH-6 **PUBLIC HEARING** scheduled this day under the State law, public notice having been inserted in the local press by the City Clerk, to hear comments on the conveyance of a **GEM Lot** to **Trustees of the Gethsemane Community Fellowship Baptist Church**, on property located at **606 Maltby Avenue**.

PH-7 **PUBLIC HEARING** scheduled this day under the State law, public notice having been inserted in the local press by the City Clerk, to hear comments on the conveyance of a **GEM Lot** to **Trustees of the Jay Investment Corporation**, on property located at **985 Parish Road.**

PH-8 **PUBLIC HEARING** scheduled this day under the State law, public notice having been inserted in the local press by the City Clerk, to hear comments on a Lease Agreement with **Rover Marine, Inc.** for the lease of city owned property located at **224 E. Main Street**.

REGULAR AGENDA

R-1 Letter from the City Manager and an Ordinance entitled, "An Ordinance permitting **433 Granby Street, LLC** to encroach into the right of way at **433 Granby Street** with signage," will be introduced in writing and read by its title.

R-2 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting **JJB Financial, LLC** permission to encroach into the right of way at **345 Granby Street** approximately 109 square feet for the purpose of outdoor dining and approving the terms and conditions of the Encroachment Agreement," will be introduced in writing and read by its title.

R-3 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting **Michael, LLC** permission to encroach into the right of way at **1231 W. Olney Road** approximately 162 square feet for the purpose of outdoor dining and approving the terms and conditions of the Encroachment Agreement," will be introduced in writing and read by its title.

R-4 Letter from the City Manager and an Ordinance entitled, "An Ordinance authorizing the City Manager to enter into a **Right of Entry Agreement** with the owners of certain parcels of property located around Lake Modoc for the purpose of a **Water Quality Retrofit Project**," will be introduced in writing and read by its title.

R-5 Letter from the City Manager and an Ordinance entitled, "An Ordinance approving the terms and conditions of Safekeeping and Custody Agreement between the City of Norfolk and Virginia Cartographical Society, LC for the custody of a historical map collection and authorizing the City Manager to execute the **Safekeeping and Custody Agreement** on behalf of the City," will be introduced in writing and read by its title.

R-6 Letter from the City Manager and an Ordinance entitled, "An Ordinance accepting an additional Grant Award of $294,197.20 from the **Virginia Department of Emergency Management** which includes $220,647.90 from the **Federal Emergency Management Agency**, $58,839.44 from the Commonwealth of Virginia and $14,709.86 as a cash match from the City through the **Hazard Mitigation Grant Program** for the City of Norfolk Floodproofing of Strickland and Jones Project and appropriating and authorizing the expenditure of the additional funds for the project," will be introduced in writing and read by its title.

R-7 Letter from the City Manager and an Ordinance entitled, "An Ordinance accepting a Grant Award of up to $282,984.00 from the **Virginia Department of Behavioral Health and Development Services** through the Hampton-Newport News Community Services Board to Norfolk Community Services Board to provide permanent supportive housing to individuals in Eastern State Hospital able and eligible to live independently in the community, and appropriating and authorizing expenditure of grant funds," will be introduced in writing and read by its title.

R-8 Letter from the City Manager and an Ordinance entitled, "An Ordinance to repeal one subsection each of Sections 25-646, 653, and 654, and to amend and reordain Sections 25-646, 652, 653, 654 and 656 of the *Norfolk City Code, 1979* **SO AS TO** add one new speed limit, one new one-way street, two new yield intersections, fifteen new stop intersections, and three new trucks of one and one-half tons on certain streets prohibitions," will be introduced in writing and read by its title.

R-9 Letter from the City Manager and an Ordinance entitled, "An Ordinance approving a Deed of Easement for Pedestrian Access from Norfolk Outlets, LLC to the City of Norfolk, approving a Deed of Easement for Force Main from Norfolk Outlets, LLC to the City of Norfolk, approving a Lighting Maintenance Agreement between the City of Norfolk and Norfolk Outlets, LLC, approving a Lake Bank Maintenance Agreement between the City of Norfolk and Norfolk Outlets, LLC, authorizing the City Manager to accept a Deed of Dedication from the Economic Development Authority of the City of Norfolk for the public roadway to be constructed at Lake Wright, authorizing the City Manager to accept a Special Warranty Deed from the Economic Development Authority of the City of Norfolk for the residual tract of land located West of the public roadway to be constructed at Lake Wright, and authorizing the City Manager to accept any and all easements and to enter into such easements, maintenance and other agreements as are required by the City of Norfolk for the Economic Development Authority of the City of Norfolk to close upon the sale of real property to Norfolk Outlets, LLC and as required by the **Site Development Plans for Norfolk Premium Outlets, Norfolk, Virginia**, dated April 6, 2016," will be introduced in writing and read by its title.

Brock Ventures, Inc.
116 Colonial Dr.
Wilmington, NC 28403
stephen@brockvi.com
336.813.3697

March 11, 2016

City of Norfolk **PH-1**

RE: PH-1 Plan Amendment and Rezoning at 435 Virginia Avenue – Brock Ventures, Inc.

Dear Officer:

Please continue the rezoning application for April 26, 2016 to the May 24, 2016 meeting as we continue to work with the City on the Land Disposition and Development Contract.

Thank you for your consideration.

Regards,

Stephen Brock

01/25/2016 tsv

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved: RM

By _____
DEPT.

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE TO AMEND THE CITY'S GENERAL PLAN, PLANORFOLK2030, SO AS TO CHANGE THE LAND USE DESIGNATION FOR PROPERTY LOCATED AT 435 VIRGINIA AVENUE FROM INSTITUTIONAL TO MULTIFAMILY.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the land use designation set forth in the City's general plan, plaNorfolk2030, for the property located at 435 Virginia Avenue is hereby changed from Institutional to Multifamily. The properties which are the subject of this change in land use designation are more fully described as follow:

Property fronts 560 feet, more or less, along the southern line of Virginia Avenue beginning 110 feet, more or less, from the eastern line of Colonial Avenue and extending eastwardly; property also fronts 560 feet, more or less, along the northern line of Carolina Avenue; premises numbered 435 Virginia Avenue.

Section 2:- The Council hereby finds that this general plan amendment is required by public necessity, convenience, general welfare, or good zoning practice.

Section 3:- That this ordinance shall be in effect from the date of its adoption.

01/25/2016 lds

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved: RM

By _____
DEPT.

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE TO REZONE PROPERTY LOCATED AT 435 VIRGINIA AVENUE FROM IN-1 (INSTITUTIONAL) DISTRICT TO R-13 (MULTI-FAMILY RESIDENTIAL) DISTRICT.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the property located at 435 Virginia Avenue is hereby rezoned from IN-1 (Institutional) District to R-13 (Multi-Family Residential) District. The property which is the subject of this rezoning is more fully described as follows:

Property fronts 560 feet, more or less, along the southern line of Virginia Avenue beginning 110 feet, more or less, from the eastern line of Colonial Avenue and extending eastwardly; property also fronts 560 feet, more or less, along the northern line of Carolina Avenue; premises numbered 435 Virginia Avenue.

Section 2:- That the official Zoning Map for the City of Norfolk is hereby amended and reordained so as to reflect this rezoning.

Section 3:- The Council hereby finds that this zoning amendment is required by public necessity, convenience, general welfare, or good zoning practice.

Section 4:- That this ordinance shall be in effect from the date of its adoption.

C: Dir., Cultural Facilities, Arts and Entertainment

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

April 26, 2016

From: John Rhamstine, Director, Department of Cultural Facilities, Arts and Entertainment

Subject: Lease Agreement with the Virginia Opera Association, Inc.

Reviewed: _____
Wynter Benda, Deputy City Manager

Approved: _____
Marcus D. Jones, City Manager

Item Number: **PH-2**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Virginia Opera Association, Inc.

III. **Description:**
This agenda item is an ordinance approving the terms and conditions of a lease agreement ("agreement") between the City of Norfolk (the "city") and the Virginia Opera Association, Inc. ("Virginia Opera") for the continued use of Harrison Opera House located at 160 W. Virginia Beach Boulevard.

IV. **Analysis**
This agreement will allow the Virginia Opera to continue to mount operatic performances in Harrison Opera House as well as provide office space for the company and its administrators. The term of the agreement is for three (3) years with the option to renew for two (2) additional one-year periods.

V. **Financial Impact**
This agreement stipulates that Virginia Opera will pay an escalating rent to the city according to the following schedule as calculated from the base FY 2017 (July 1 thru June 30) rental amount of $105,702, to be increased by three percent (3%) each year of this agreement.

Virginia Opera Association Rent Schedule

Term	Base Rent
07/01/2016 – 06/30/2017	$105,702
07/01/2017 – 06/30/2018	$108,873
07/01/2018 – 06/30/2019	$112,139
07/01/2019 – 06/30/2020	$115,503
07/01/2020 – 06/30/2021	$118,968

810 Union Street #1101 ▪ Norfolk, Virginia 23510
Phone: 757-664-4242 ▪ Fax: 757-664-4239

VI. Environmental

N/A

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the city's agenda notification process.

VIII. Board/Commission Action

The Civic Facilities Commission approved of the terms for this new agreement.

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of Cultural Facilities, Arts and Entertainment and the City Attorney's Office

Supporting documentation from the City Attorney's Office:

- Ordinance
- Lease Agreement

3/21/2016-bjl

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT. Cultural Facilities, Arts & Entertainment

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING THE TERMS AND CONDITIONS OF A LEASE AGREEMENT BETWEEN THE CITY AND THE VIRGINIA OPERA ASSOCIATION, INC. FOR CERTAIN PREMISES BEING THE HARRISON OPERA HOUSE LOCATED AT 160 WEST VIRGINIA BEACH BOULEVARD, NORFOLK, VIRGINIA AND AUTHORIZING THE EXECUTION OF THE LEASE AGREEMENT.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the terms and conditions of a Lease Agreement between the City and the Virginia Opera Association, Inc., as Lessee, whereby the City leases to Virginia Opera Association, Inc., certain City-owned premises known as the Harrison Opera House at 160 West Virginia Beach Boulevard, Norfolk, for a period of three (3) years, with the option to renew for up to two (2) additional one-year periods, a copy of which is attached hereto, are hereby approved.

Section 2:- That the City Manager is authorized to execute the Lease Agreement on behalf of the City and to do all things necessary and proper to carry out the Lease Agreement.

Section 3:- That the City Manager is further authorized to correct, revise or amend the Lease Agreement, with the advice and counsel of the City Attorney, as he may deem necessary to carry out the intent of the Council.

Section 4:- That this ordinance shall be in effect from and after thirty days from the date of its adoption.

Lease Agreement between
The City of Norfolk and
The Virginia Opera Association

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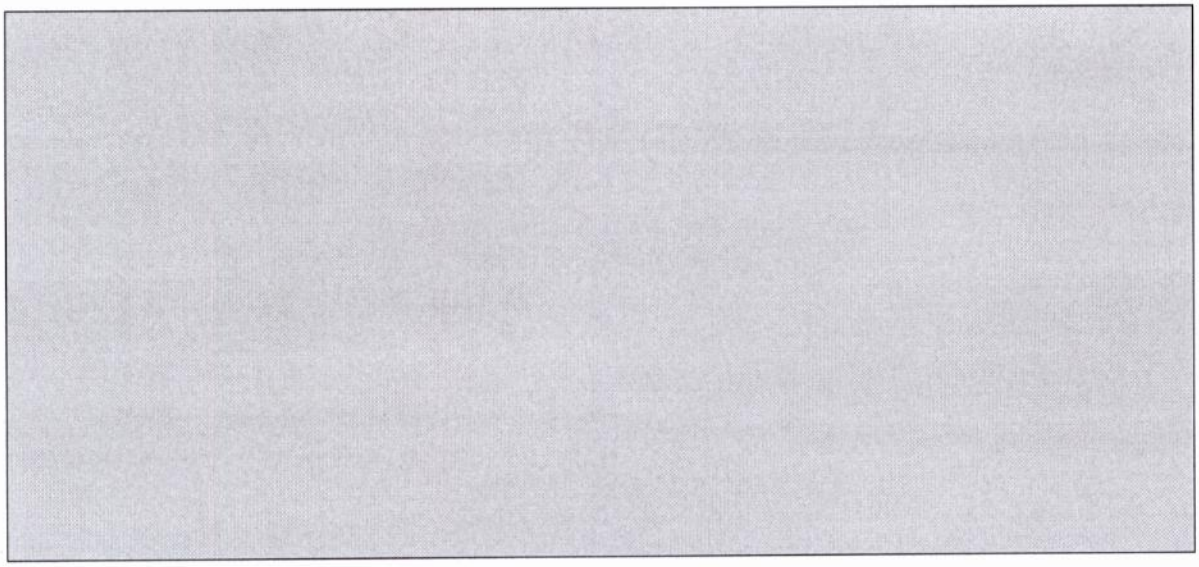


This Lease Agreement, entered into this _____(date) day of_____-____(month), _____(year), by and between the CITY OF NORFOLK, hereinafter called the "City" and THE VIRGINIA OPERA ASSOCIATION, INC. (lessee), hereinafter called the "VO".

WHEREAS, the City desires the Lessee to provide the services set forth in the Scope of Services set forth below;

WHEREAS, the Lessee represents that it is willing and qualified to provide the services.

NOW THEREFORE, in consideration of the premises and the mutual covenants, promises, and representations contained herein, the parties hereto mutually agree as follows.

Article I – Introduction

1.1 Definitions

A. City: The City of Norfolk

B. City Performance: Any VO Performance that is performed in recognition of City contributions to the VO and allows an agreed upon number of tickets to be provided to the City, over and above normal ticket allotments, for the exclusive use of the City.

C. CFAE: The Department of Cultural Facilities, Arts and Entertainment which is responsible for the management of all City venues used by the VO.

D. City Generated Events (CGE): Events booked by the City in the HOH.

E. Director: The Director of the Department of Cultural Facilities, Arts and Entertainment or his designee.

F. HOH: HOH or premises.

G. Lessee: The Virginia Opera Association (VO) and its successors.

H. Operational Expenses: All expenses incurred by the VO for use of City facilities excluding rent.

I. Production: Multi-performance run of one particular event, e.g. "Aida".

J. Non-Usage Days: All days other than Usage Days.

K. VO Season: The performance season of the Virginia Opera Association, usually occurring from September through May.

L. Usage Days: All days used by the VO in HOH for uses including, but not limited to performances, rehearsals, pre-rigs, load-ins and load outs.

M. VO: The Virginia Opera Association or the Lessee.

N. VO Events: All operatic productions, fund-raising, receptions and special events by VO.

O. Rehearsal Hall: Non-performance space located behind the HOH stage.

Article II – Vision/Mission/Goals

2.1. VO agrees to abide by the guidelines of the Department of Cultural Facilities, Arts and Entertainment while using HOH or other Departmental facilities.

2.2. VO shall work with the City for the betterment of both parties and the enjoyment of the audiences.

2.3. VO will work with the City to produce quality events that make business sense.

2.4. VO agrees to utilize its resources to make every effort possible to ensure that the City's venue(s) are being utilized for Lessee performances. Lessee will work in conjunction with the City to preserve and maintain these performance spaces.

2.5. VO and the City agrees to communicate openly and often about all potential issues and agrees to jointly work together to find appropriate solutions..

2.6. VO agrees to maintain its status, as professional Opera company for the entire term of this agreement, including all extensions.

Article III – General Contract Provisions

3.1 Term

The term of this Agreement will be in effect for three (3) years from July 1st, 2016 through June 30th, 2019, unless terminated pursuant to section 7.9 of this Agreement. In addition to the original term, this Agreement may be renewed in writing by the parties for up to two (2) additional one year periods.

3.2 Premises

The premises specified in this Agreement is the HOH, located at 160 West Virginia Beach Boulevard, Norfolk, VA 23510 on the corner of Virginia Beach Boulevard and Llewellyn Avenue, Norfolk, Virginia. The VO may, from time to time, desire to use other City facilities for its performances. These uses will be negotiated under a separate Agreement.

3.3 Permitted Uses

Pursuant to this Agreement, VO shall conduct productions in the HOH and shall use the premises for operatic performances or other events as approved by the Director in writing prior to the use of the premises by VO for such other events. All such days shall be defined as "Usage Days", per section 1.1 L.

HOH is to be used for VO's own musically staged performances only. Non-operatic events that may be held in the HOH may only be booked and contracted by the Director or his designee.

3.4 Management of Premises

It is expressly understood and agreed by the parties that the Director shall be the City's agent for management of the premises pursuant to this Agreement.

3.5 Prohibited Uses

A. No Illegal or Immoral Purposes, Nuisance, Annoyance,

VO agrees that it will not allow the HOH to be used for any illegal or immoral purpose, and that it will not do, or suffer to be done, in or about the premises any act or thing which may be a nuisance, annoyance, inconvenience or cause damage to the City, the occupants of adjoining property or the neighborhood. The City agrees to make these same requirements applicable to other users of the premises.

B. Fire Hazard; Sanitation

VO agrees not to do and/or permit to be done any act which will increase the fire hazard or rate of fire insurance on the premises or any property thereon. For other users on the premises, the City agrees not to permit to be done and will require such other users not to do or permit to be done any act which will increase the fire hazard or rate of fire insurance on the premises or any property thereon. VO further agrees to obey all state and municipal laws and regulations relating to fire hazards, fire protection and sanitation.

3.6 Right of Entry

The City reserves the right of entry into the premises at any time, provided, however, that such entry does not interrupt or disturb any ticketed event taking place at the HOH unless it is for life safety reasons. VO shall provide the City agreed office space for CGE use. VO shall provide keys to the City for any locked/keyed areas of the premises for which VO has the keys.

3.7 Subletting

VO shall not, without the prior written agreement of the Director, use, or allow to be used, the premises for any purpose other than as stated herein, nor assign this Lease for the whole or any part of the term, nor sublet the whole or any part of the premises, nor allow the premises or any part thereof to be occupied by any other person or organization, other than VO.

VO may, with prior written approval of the Director, sublease the "Rehearsal Hall" to other users providing the space is used for rehearsals only. No public, ticketed or special events may be held in the Rehearsal Hall.

3.8 Preservation by Lessee

A. Condition of Premises

VO will maintain during the term of this Agreement and at the expiration of this Agreement deliver, the HOH in good order and condition, with the exception of reasonable wear and tear.

B. Alterations, Additions, or Improvements

VO shall not make any alterations, additions or improvements to the HOH without the Director's written consent. Any such approved alterations, additions or improvements made to the HOH by the VO during the term of this Agreement shall immediately become the property of the City. The VO's portable equipment purchased by VO shall not be included in such improvements.

Article IV – General Operational Contract Provisions

4.1 Booking

On or before March 1st of each year during the term of this Agreement, VO shall submit to the Director in writing a proposed Usage Day Calendar for the upcoming (September through May) VO Season.

On or before April 1st of each year during the term of this Agreement, the City and VO shall meet and finalize the Usage Day Calendar for the upcoming season.

The City and VO may amend the Usage Day Calendar as agreed in writing by the parties. All days, other than Usage Days, shall be Non-Usage Days.

VO will book or produce high quality operatic and/or musical theater events during its season and will utilize every possible effort at its disposal to increase the subscription sales base, individual ticket sales and the sponsorship base to help ensure the long-term success of the VO.

4.2 Box Office

A. Staffing

All box office staffing, equipment, supplies and other ticket related materials for all VO events at the HOH will be provided solely by the VO at VO's expense. In addition, VO shall supply and pay for any and all ticketing or box office staffing utilized at other City venues or elsewhere during the course of this Agreement for performances that may not take place at HOH. Examples of staffing includes, but is not limited to, box office manager, ticket sellers, will-call personnel, and cashiers.

B. Subscription Sales / Season Ticketing / Individual Ticketing

All subscription sales, season ticketing and individual ticketing are the responsibility of VO unless otherwise agreed in writing by the parties.

The City and VO each agree to share their respective subscribers list with the other under the following conditions: a) each party agrees that these lists may be accessed and used only when permission is granted in writing by the other party; b) each party agrees not to sell or otherwise distribute the list but may at its discretion use the list for the promotion and sale of other events taking place within facilities contained within the Cultural Facilities, Arts and Entertainment Department; and c) the subscriber lists may be requested in writing on a per event

approval basis by either party. The parties agree that the lists will not be unreasonably withheld. These lists will not be distributed to other agencies.

Upon termination or expiration of this Agreement [and any subsequent applicable renewal period(s)], or upon the dissolution or relocation of VO to a location not less than within a fifty (50) mile radius of Norfolk, the parties hereby agree that VO shall provide its subscriber list to the City for use in promoting events. .

The parties agree that VO may utilize any method or company for ticket sales and distribution of tickets for VO events including the City's Ticketmaster or any other ticketing systems used by the City. VO shall make 100 tickets for VO events available for sale on the City's Ticketmaster system or any other ticketing system used by the City.

The City will maintain a box office location at HOH for its exclusive use for CGEs. Any Ticketmaster or other ticketing equipment located in this box office area will be for the exclusive use of the City during the term of this Agreement, unless otherwise agreed by the parties.

C. Complimentary Tickets

VO shall make available to the City a minimum of twenty (20) complimentary tickets for each VO performance, if requested by the Director, to be used at the City's sole discretion.

D. Admission and Other Taxes

VO is responsible for the payment of all admission and other City, State or Federal taxes associated with the ticketing of VO events held in HOH or other City venues. Should the VO utilize the City's ticketing system, the City may, at its discretion, retain and remit City taxes associated with VO events held in City venues.

4.3 Limited Retail Sales

Retail merchandise may be sold by VO in City venues during performances of VO events only. Such merchandise includes shirts, cups, programs and CDs that are reflective of the Virginia Opera or the artist(s) performing in the City venue at that time. VO shall be responsible for all expenses associated with such retail sales including, but not limited to, staffing, bootleg security (if requested), inventory, tables, racks, stands, credit card processing, cash drawers and signage. VO shall retain all proceeds from, and pay all taxes associated with, such retail sales.

For CGEs or other events leased by the City, the City, at its sole discretion, may use any retail sales staff or methodology it deems necessary to sell merchandise, including but not limited to, records, CD's, t-shirts, jackets and other show related merchandise. This may include using VO staff for such sales with prior notice.

4.4 Food and Beverage/Catering/Concessions

VO agrees to comply with all applicable food and beverage laws in the State of Virginia and the City of Norfolk.

VO shall have the exclusive rights to all food and beverage concessions sold at VO's events in the HOH only. Concessions include, but are not limited to, alcoholic and non-alcoholic beverage sales, confections and other food as deemed appropriate by VO. VO and all patrons attending events of VO may not at any time be allowed to bring outside food and beverage of any type into HOH.

VO may, if requested by the City, provide concessions services for CGEs and will be subject to current City commissions. If, for any reason, VO determines it is not in its best interests to make concession service available for a CGE, the City shall then have the right to provide concession services with no commissions due VO for such sales.

On Non-Usage days, VO shall not interfere with food and beverage sales by the City or other users and shall not be obligated to furnish personnel for such sales or be responsible for conducting such sales. City may, at its sole discretion, hire outside caterers to supply food and beverage sales for any CGE.

4.5 Event Staffing

VO is responsible for providing and paying for all event-related staffing at VO events. The numbers of such staff shall be determined by VO but will be within the standard practices of safe staffing levels as set by the IAVM safety standards. Staffing shall include, but not be limited to, Ushers, Ticket Takers, Door Guards, Stage Guards, Police, Stage Labor, and Paramedics.

For CGEs, all staffing levels shall be determined by the Director or designated CFAE staff. The City may use VO staff to assist with CGEs or, at the sole discretion of the Director, staff the CGEs with non-VO staff.

The City may use VO staff, when possible for CGEs, providing VO staff are competitively priced and qualified to work the specific CGE in HOH at that time. Such usage shall be determined solely by the Director or his designee. Payments by the City to VO for such staff services shall be credited against the Debt which is the subject of the attached Agreement for Repayment of Past Due Debt and Promissory Note until the Debt is paid in full and then the payments by the City to

VO for such staff services shall be credited against the rent due to the City from VO pursuant to this Lease Agreement.

4.6 Event Information

Should the City choose to use VO staff for CGEs, VO will provide the City with detailed estimates of staffing, equipment, and other logistical needs and costs for each performance, at least 14 days in advance of the event.

4.7 Parking

All parking arrangements for Lessee staff and patrons at the HOH shall be negotiated with the City's Division of Parking and is subject to the City's Division of Parking fees, rules and regulations.

Article V – Financial Considerations

5.1 Rent

The parties agree that VO shall pay rent to the City according to the following schedule as calculated from the base FY 2017 (July 1 thru June 30) rental amount of $105,702.00, to be increased by three percent (3%) each year of this Agreement.

Virginia Opera Association
Rent Schedule

Year (7/1 – 6/30)	Base Rent
2016	$105,702
2017	$108,873
2018	$112,139
2019	$115,503
2020	$118,968

Rent shall be paid to the City by VO on or before the last day of each month for that month during the term of this Agreement in the amount of one twelfth (1/12) of the annual rent due. Payment shall be sent to the Department of Cultural Facilities, Arts and Entertainment in a check or wire transfer, payable to SCOPE PROMOTIONS.

Late charges shall accrue at the rate of 1.5% per month for any payments beyond 30 days outstanding. Failure to pay Rent as required under this Section shall constitute breach of this Agreement pursuant to Section 7.9 of this Agreement.

5.2 Reimbursable Expenses

VO is responsible for paying all expenses associated with VO performances and rehearsals in non-HOH City venues including, but not limited to, such items as staffing costs, catering, parking, equipment rental, damages, ticketing, cleaning and any additional requested items.

VO will provide the City with a current rate sheet on July 1 of each year of this Agreement that outlines the charges for all labor, equipment rental, cleaning and other VO services that may be used by the City for CGEs.

The City will provide the VO, upon request with its rate sheet each year of this Agreement outlining similar costs for other City venues.

5.3 Concessions Commissions Payments

VO will be required to remit to the City on or before June 30 of each year during this Agreement 10% of adjusted gross concessions sales, defined as total gross receipts less applicable city and state taxes, for sales generated at VO events at the HOH each year along with actual documentation verifying the total sales for that year.

This documentation will be required with each payment remitted to the City.

5.4 Retail Sales Commission Payments

The City hereby waives its rights to commissions normally charged on retail sales in City operated venues for all VO events at HOH. VO will be responsible for remittance of all applicable sales tax.

5.5 Inclusion of City / City Recognition

A. Advertising

VO will include the SevenVenues logo in all VO advertising, including print and television advertisements, websites, and all printed collateral materials relating to events taking place within City facilities, in a size no smaller than other top tier VO sponsors. Use of the supplied SevenVenues, or any subsequent logos with the venue name included is required in all VO materials. This inclusion of City logos shall be done at no cost to the City.

B. Website Links

VO agrees to provide a link on its website to both the SevenVenues and Ticketmaster website at no cost to either party during the term of this Agreement. Instructions for artwork and internet use to be exclusively provided by the SevenVenues marketing representative.

C. Program Ad

VO agrees that all programs produced and used by VO for VO performances will each contain a one page ad featuring SevenVenues at no cost to the City. Artwork and ad content to be exclusively provided by the SevenVenues marketing staff.

D. Sponsorship Recognition

VO agrees to list the City of Norfolk as a sponsor in all materials, announcements, advertisements and any other types of VO sponsor recognition at no cost to the City.

5.6 Business Plans-VO Board

VO acknowledges the need for the City to be involved with the advertising and business planning processes that VO undertakes during its operating year. In recognition of this need and in order to keep the City informed of business and advertising strategies, that VO hereby agrees that the City's Director or his designee is appointed as an ex-officio member of the VO Board of Directors for the term of this Agreement.

VO shall provide its Business Plan to the Director on or before June 30th of each year during the term of this Agreement.

A. Financial Statements

VO will provide audited financial statements to the City each calendar year of this Agreement (July 1 – June 30). The audited financial statements will be provided to the Director on or before each December 1st date during the term of this Agreement.

B. Inspection and Copying of Records

The parties agree that the City shall have the right to inspect and copy VO's business and financial records as deemed necessary by the Director.

5.7 Payments Due

VO shall remit all non-rent payments to the City within 30 days of invoice receipt. Any overdue amount will accrue a 1.5% fee assessed monthly after an initial 30 day period.

5.8 Credit for Utilities

The goal of this program is to provide incentive for VO to work in conjunction with the City to maintain efficient use of all utilities supplied to the HOH and currently paid for by the City. In an effort to further that cooperation, the City is willing to credit VO with rental rebates for verifiable reductions on a monthly basis. Payments by the City to VO for such energy and water use savings ("utility credits") shall be credited against the Debt which is the subject of the attached Agreement for Repayment of Past Due Debt and Promissory Note until the Debt is paid in full and then the payments by the City to VO for such utility credits shall be credited against the rent due to the City from VO pursuant to this Lease Agreement. The outline for the calculation of savings is listed below:

TENANT UTILITY CALCULATIONS

Tenant's utility credits will be calculated by using the following guidelines. Credits will be calculated on a monthly basis and will be applied to all three utility services (electricity, gas, and water). Each utility will be calculated separately and then combined to generate a total credit calculation.

Please also refer to the attached Spreadsheet.

1) **AMUC. Average Monthly Utility Consumption:**

   The Average Monthly Utility Consumption is calculated monthly and averaged out over the past 5 years of data for that month.

   Note this calculation is recorded as a unit of measurement i.e. Kwh.

2) **Rate:**

   The Rate calculation is taken from June 30th of the prior year. In order to calculate a credit for each utility, the rate will be calculated from the June bill of the previous financial year. This amount will be used for the entire year.

3) **Baseline:**

The Baseline is the dollar amount of a utility savings required to receive a credit.

AMUC x Rate = Baseline

4) **Actual:**

Actual utility usage for the current month reported in dollars.

5) **Credit Calculation:**

Credit is the difference between the baseline and the actual utility cost. If the actual utility cost exceeds the baseline utility cost, the credit will default to zero.

Article VI – Maintenance and Equipment

6.1 Inventory

The parties agree that each party has written an inventory list of all equipment which it owns or claims to own, which Inventory Lists are attached hereto. The parties agree that the lists shall be reviewed and updated on or before June 30th of each year during this Agreement and more often if equipment is added or deleted from the inventory lists.

6.2 Improvements

VO will not make any alterations, improvements or otherwise renovate or cause to be renovated any areas inside or outside of City venues without the prior written approval of the Director.

6.3 Care of Facilities

VO agrees to use all City venues properly and assist the City with the proper maintenance and use of City venues and equipment during VO Usage Days.

6.4 Equipment Maintenance

VO will provide general maintenance for the equipment in the HOH as follows:

A. Lessee's Equipment

VO will be responsible for the maintenance, replacement, security and any costs associated with the use of VO's equipment. No equipment may be installed by VO in any City venue without the prior written approval of the Director or his designee. All equipment installed by VO will be of a temporary nature and will be maintained by VO and VO is to reimburse the City for any work done by the City to VO's equipment at VO's request.

B. Permanent City Equipment

The City shall provide maintenance for permanent City equipment at the HOH. This includes HVAC systems, plumbing and other building infrastructure. The repair of any damage to Permanent City equipment due to negligence by VO's staff shall be billed to VO. This does not include the rigging/fly loft system. The City will conduct inspections of the rigging/fly loft system every two (2) years. Any maintenance/damage repairs outside of normal wear and tear will be billed to VO.

6.5 Janitorial Services

VO shall provide janitorial services in all areas of the HOH at VO's sole expense. These services shall include, but not be limited to, general cleaning, mopping, vacuuming, carpet shampooing, restroom maintenance, window cleaning, kitchen cleaning, dusting and all cleaning practices generally associated with public assembly facilities. All supplies needed for such janitorial services, including but not limited to, mops, brooms, vacuums, paper products, cleaning solutions, rags and other materials will be supplied by VO at the sole expense of VO. VO shall maintain the HOH in a spotless and pristine manner ensuring proper care of all spaces and equipment. For CGEs, VO shall provide the Director with a written estimate of cleaning fees not less than fourteen (14) days prior to the CGE and the City and VO shall negotiate and agree on the cleaning fees to be paid by the City.

6.6 Utilities

The City, at its expense, shall supply basic utilities to the HOH including water, electricity and natural gas. The City will not supply other utilities such as cable television, satellite television, internet access, telephone or any equipment associated with such utilities. The City may make requests to be permitted access to use such utilities for CGEs and VO will make every effort to provide requested utilities at a mutually agreeable rate. City equipment for City supplied utilities will be operated in a mutually agreeable manner where both parties agree that the conservation of utility use is important and will be a high priority to both the City and VO. The City and VO recognize that City equipment may need maintenance and will break down from time to time. The City shall use its best efforts to maintain

and repair such equipment in a timely manner, however, the City will not be responsible for mechanical problems in City Equipment that affect events or may temporarily cause the discomfort of users of the HOH.

6.7 Storage

VO will be permitted to use certain areas of HOH for storage of VO equipment and merchandise. The size and location of such space will be at the sole discretion of the Director and will be specified in the Operating Agreement.

6.8 General Maintenance

VO shall be responsible, at its sole expense, for general maintenance in the HOH during the course of this Agreement. General Maintenance shall include, but not be limited to, basic plumbing, touch up painting, wall repairs, replacement of light bulbs and small electrical repairs, door and lock repairs, broken windows, seat repairs, maintenance of all stage electrical, lighting, rigging and other stage systems, flooring, walkways and other standard basic maintenance needs at the HOH. This does not include building damage due to roof leaks, vandalism, or other non-VO generated activity or occurrences.

6.9 Capital Maintenance

The City shall be responsible for major capital maintenance to the HOH. Major Capital items shall include such systems as HVAC, Roofing, Standard Utilities Capital work (Water, Gas and Electricity), structural matters, major repairs involving carpeting or painting, elevators and other large system maintenance. Such repairs will be done on a long term major maintenance schedule that will be reviewed by VO and City on an annual basis. Repairs of Major Maintenance Systems will be completed as funds are made available by the City.

Article VII – Other Contractual Terms

7.1 Liability/Indemnification

VO will not hold the City liable for any damage to VO's property except as caused by the negligence of the City or other users of the premises. VO agrees to assume all risks of every kind, whether relating to property or person in connection with its occupancy of the premises, whether the same arise from defects latent or patent in connection with the building, or other parts of the premises and whether or not the same were known by the City at the time or making this Lease and were not disclosed by the City at that time, or at any subsequent time, provided that VO is not responsible for damage done by persons on premises when the same are leased by the City.

VO hereby agrees and binds itself and its successors to defend, indemnify and save harmless the City of Norfolk and the officers, employees and agents of the City from and against all claims, damages, losses and expenses and all costs or damages to which the City may be put, on account of or by reason of, any injury or alleged injury to or death of any person or damage to or destruction of any property, resulting from intentional acts, negligence or carelessness in regard to the matters which are the subject of this Agreement or by or on the account of any act, or omission of VO, its officers, employees or agents. VO further agrees to defend, indemnify and save harmless the City, and its officers, employees or agents against any and all claims, suits or demands that may accrue to or be suffered by, or adjudicated against them by reason of any injury sustained by or death of VO or any employee of VO or of a subcontractor in and about the said work, under and pursuant to the provisions of the Worker's Compensation Law or any amendments thereto.

The City shall not be liable or responsible for any loss or damage to any real and personal property of VO, including loss of income and extra expense associated with any incident, arising out of any incident which is the proximate cause of any peril included within the "Special Causes of Loss" form of the standard Commercial Property Policy as used within the Commonwealth of Virginia, and including additional perils of flood, the dishonesty, movement, the back-up of sewers or drains, collapse of any building or structure, weather conditions, acts of God or any other causes of loss arising out of Nature.

7.2 Damage to Premises

If, during the term of this Agreement the premises or any part thereof shall be damaged, the City shall not be obligated to repair or rebuild the same. If the premises become unusable due to such damages, this Agreement shall immediately terminate.

7.3 Insurance

VO agrees to secure and maintain throughout the term of this Agreement and any renewal periods Comprehensive Commercial General Liability and Contractor's Public Liability insurance for bodily injury, death and property damage with coverage in the amount of Three Million Dollars ($3,000,000) per occurrence and in the aggregate with a company authorized to do business in Virginia and further agrees that such insurance shall name the City of Norfolk, its officers, employees and agents as additional named insured parties on the required policies. VO shall provide a certificate evidencing the required coverage to the City upon execution of this Agreement and upon renewal(s), if any. Should the City decide to increase its insurance coverage requirements in any of the facilities used by VO during the course of this agreement, VO will comply with such requirements.

7.4 Force Majeure

If during the term, the premises or any part thereof shall be substantially damaged by fire, storm, other casualty or other force majeure, the City shall not be obligated to repair or rebuild the same, and if the premises becomes un-tenantable, due to fire, storm, other casualty or force majeure, this Lease shall immediately terminate, provided that there shall be no cessation of rent if the damages shall have been the result of the negligence, default, or willful act of VO or his agents or employees. Any insurance or other benefits available under City's insurance policies shall be the sole property of City. In the event VO is deprived of use of the premises as a result of such damage, the rent shall be prorated.

7.5 Compliance with All Laws

VO hereby assures and certifies that it will comply with all local, state and federal laws, ordinances, rules, codes and regulations insofar as they are applicable to the matters which are the subject of this Agreement.

7.6 Compliance with Federal Immigration Law

At all times during which this Agreement is in effect, VO shall not knowingly employ any unauthorized alien. For purposes of this section, an "unauthorized alien" shall mean any alien who is neither lawfully admitted for permanent residence in the United States nor authorized to be employed by either Title 8, Section 1324(a) of the United States Code or the U.S. Attorney General.

7.7 Non-Discrimination

VO agrees to comply and to require all subcontractors and materialmen paid in whole or in part from funds made available under the Agreement to comply as follows:

A. No Discrimination

No person in the United States shall, on the grounds of race, color, national origin, sex or handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any activity funded by this Agreement in accordance with prevailing Federal Law.

B. ADA

Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to activities under this Agreement.

C. Civil Rights Act

Any prohibition against discrimination on the basis of religion, or any exemption from such prohibition, as provided in the Civil Rights Act of 1964 or Title VIII of the Act of April 11, 1968, hereafter referred to as the Civil Rights Act of 1968, shall also apply to activities under this Agreement.

7.8 Independent Contractor

The parties hereto agree that VO and its subcontractor(s), if any, are independent contractors and shall not be considered to be employees of the City for any purposes whatsoever.

7.9 Breach or Default/Termination

In the event of breach or default by either party of the terms and conditions of this Agreement, written notice shall be provided to the party in breach or default, which party shall then have the opportunity to cure the breach or default. If such breach or default is not cured within twenty (20) days of the notice (and such cure period is not extended by the parties), this Agreement may be terminated by an additional ten (10) day written notice of termination. Upon such termination, VO shall vacate the premises within sixty (60) days of the termination date.

7.10 Audit

The City reserves the right to audit VO's operations in HOH with proper notification which shall include VO allowing the City to inspect and or copy VO financial and business records and materials relevant to the products and services which are the subject of this agreement. This may include, but not be limited to, box office, concessions, catering, VO services to the City, stagehands, equipment inventory, safety related issues, alcohol sales and other issues as may be deemed important to the City's interests.

7.11 Non-Waiver of City's Rights

Any failure by City to insist upon strict observance on the part of VO of any covenant contained herein, whether or not City shall of knowledge of the breach thereof, shall not be deemed a waiver of City's right at any time during the term hereof to insist upon such strict observance during the remainder of the term.

CITY OF NORFOLK

By: _____

City Manager

Attest:

_____
City Clerk

THE VIRGINIA OPERA
ASSOCIATION, INC.

By: _____

Contents Approved:

_____
Cultural Facilities, Arts and Entertainment

Form & Correctness Approved:

_____
Mary L.G. Nexsen, Deputy City Attorney

C: Dir., Department of General Services

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

April 26, 2016

From: David S. Freeman, AICP
Director of General Services

Subject: Lease Agreement between the City of Norfolk and Grace's Tailor Shop, Inc.

Reviewed: _____
Sabrina Joy-Hogg, Deputy City Manager

Ward/Superward: 2/6

Approved: _____
Marcus D. Jones, City Manager

Item Number: **PH-3**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Grace's Tailor Shop, Inc.
130 Bank St.
Norfolk, VA (Fountain Park Garage)

III. **Description:**
This agenda item is an ordinance to approve a lease agreement between the City of Norfolk (the "city") and Grace's Tailor Shop, Inc. ("Grace's") for lease of city-owned property.

IV. **Analysis**
This lease agreement will permit Grace's to lease and use the city-owned space (672 square feet) located at 130 Bank Street for the operation of a custom tailoring shop. The term of the proposed lease is five (5) years, commencing on May 1, 2016 and terminating on April 30, 2021.

V. **Financial Impact**
The rent will be subject to a 3% annual escalation.

Term	Monthly Rent	Annual Rent	Price Per Sq. Ft.
05/01/2016 – 04/30/2017	$1,176.00	$14,112.00	$21.00
05/01/2017 – 04/30/2018	$1,211.25	$14,535.00	$21.63
05/01/2018 – 04/30/2019	$1,247.58	$14,971.00	$22.28
05/01/2019 – 04/30/2020	$1,285.08	$15,421.00	$22.95
05/01/2020 – 04/30/2021	$1,323.75	$15,885.00	$23.64

Liability insurance for 130 Bank St. (Grace's Tailor Shop Inc.)	The City has been named as an additional insured in the amount of $1,000,000 per occurrence; therefore, there should be no financial risk to the City

VI. Environmental

There are no known environmental issues associated with this property.

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the city's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of General Services – Office of Real Estate and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Exhibit A to Ordinance – Proposed Lease Agreement

3/31/2016-wld

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____ for DSF
DEPT. General Services

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING A LEASE AGREEMENT WITH GRACE'S TAILOR SHOP, INC. FOR THE LEASE OF CITY OWNED PROPERTY LOCATED AT 130 BANK STREET.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Lease Agreement, a copy of which is attached hereto as Exhibit A, between the City of Norfolk ("City") and Grace's Tailor Shop, Inc. ("Grace"), whereby the City leases certain property located at 130 Bank Street to Grace for use as a tailoring shop, is hereby approved.

Section 2:- That the City Manager and other proper officers of the City are authorized to execute the Lease on behalf of the City and to do all things necessary and proper to carry out its terms.

Section 3:- That the City Manager is further authorized to correct, amend or revise the Lease Agreement as he may deem advisable in order to carry out the intent of the Council.

Section 4:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

EXHIBIT A TO ORDINANCE

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") made this _____ day of _____, 2016, by and between the **CITY OF NORFOLK,** a municipal corporation of the Commonwealth of Virginia ("City"), Lessor, and **GRACE'S TAILOR SHOP, INC.**, a Virginia corporation ("Grace"), Lessee.

WITNESSETH:

1. **PREMISES**. City, for and in consideration of the rents, covenants and agreements hereinafter mentioned, reserved and contained, to be paid, kept and performed by Grace, does hereby demise and lease unto Grace, and Grace does hereby lease from City, the property owned by the City of Norfolk being a portion of Fountain Park Garage, 672 square feet in area, located at 130 Bank Street, in Norfolk, Virginia, as shown in Exhibit A attached hereto ("Premises").

2. **USE.** Grace covenants and agrees to use and occupy Premises for the operation of a tailoring shop and for no other purpose.

3. **LEASE TERM.** This lease agreement is for a five year term and will commence on May 1, 2016 ("Commencement Date") and will terminate on April 30, 2021 ("Termination Date"), subject to the default provisions contained in Section 25.

4. **RENT:** Rent shall be made payable to the Norfolk City Treasurer and shall be in such sums as are set forth in the table below. The rent amount will increase 3% annually in each successive year of the lease.

Term	Rent PSF	Annual Rent	Monthly Rent
05/01/2016-04/30/2017	$21.00	$14,112.00	$1,176.00
05/01/2017-04/30/2018	$21.63	$14,535.00	$1,211.25
05/01/2018-04/30/2019	$22.28	$14,971.00	$1,247.58
05/01/2019-04/30/2020	$22.95	$15,421.00	$1,285.08
05/01/2020-04/30/2021	$23.64	$15,885.00	$1,323.75

The rent shall be paid in monthly installments, made promptly on the first day of each month during the term of this Lease without demand and without offset or deduction. No payment by Grace or receipt by City of a lesser amount than the monthly installment stipulated in this Lease shall be deemed other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or payment, or any writing accompanying any check or payment of such rent, be deemed an accord and satisfaction, and City may accept such check or payment without prejudice to City's right to recover the balance of such rent or pursue any other remedy provided in this Lease.

5. **PAST DUE RENT AND LATE CHARGES:** Grace hereby acknowledges that late payment by Grace to City of rent or other sums due hereunder will cause City to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. In the event Grace shall fail to pay, when the same is due and payable, any Rent, charges or adjustments, and if said sums have not been paid within five (5) days of their due date, then Grace shall pay to City a "Late Charge" of five percent (5%) of the amount due on all rents. Grace further covenants and agrees to pay City as a "bad check" or returned check charge the amount of Fifty Dollars ($50.00) per bad check.

6. **SECURITY DEPOSIT**: Grace has deposited with City a security deposit of One Thousand One Hundred Seventy Six Dollars and 0/100 ($1,176.00) ("Deposit"), which shall be held by City, without liability for interest thereon, as security for the full and faithful performance by Grace of each and every term, covenant, and condition of this Lease on the part of Grace to be observed and performed.

If any sum payable by Grace to City shall be overdue and unpaid, if City shall make payments on behalf of Grace, or if Grace shall fail to perform any of the terms or covenants of this Lease, then City, at its option, and without prejudice to any other remedy which City may have on account thereof, may appropriate and apply the Deposit, or so much thereof as may be necessary, to compensate City for the payment of such sums due or for any loss, damage or expense sustained from such default. In such event, Grace, promptly upon demand, shall restore the Deposit to the full amount. In the event Grace shall fully and faithfully comply with all of the terms, covenants and conditions of this Lease, the Deposit shall be returned in full to Grace following the Termination Date and the surrender of the Premises by Grace.

In the event any bankruptcy, insolvency, reorganization, or other creditor-debtor proceedings shall be instituted by or against Grace, the Deposit shall be deemed to be applied first to the payment of any rents and/or other charges due City for all periods prior to the institution of such proceedings and the balance, if any, of such Deposit may be retained by City in partial satisfaction of City's damages.

7. **UTILITIES AND OTHER COSTS:** City will pay all charges when due for water and sewerage, gas and electricity and other utility charges and utility taxes in connection with the Premises. Grace will be responsible for all janitorial costs.

8. **NO JOINT VENTURE:** It is hereby agreed that nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between City and Grace, or between City and any other party, or cause either party to be responsible in any way for the debts or obligations of the other party.

9. **NO ASSIGNMENT OR SUBLEASE:** Grace covenants not to assign, mortgage or encumber this Lease nor sublet or suffer or permit the Premises or any portion thereof to be used by others without the prior written consent of the City in each instance. The transfer of fifty percent (50%) or more of Grace's stock, if Grace is a corporation, or the transfer of twenty-five percent (25%) or more partnership interest in Grace, if Grace is a partnership, or the dissolution of

Grace as a corporation or partnership, is regarded as an assignment of the Lease, and the same is not permitted without the prior written consent of the City. Grace and any guarantors shall remain liable for this Lease, its terms and covenants in such event that the City does grant consent to an assignment or sublease, and shall guarantee the performance of the assignee or subGrace without the need for guarantor's signature or consent thereto.

10. RELOCATION: If for any reason, in City's sole discretion, City wishes to relocate Grace from the Premises to other space within the Fountain Park Garage, Grace shall, within sixty (60) days after receipt of City's notice of same, vacate the Premises and relocate all of Grace's trade fixtures, equipment and inventory to the new premises designated by City. Grace's reasonable and necessary expenses for moving such trade fixtures, equipment and inventory shall be reimbursed by City within sixty (60) days of City's receipt of invoices for such expenses. City shall pay for the completion of any necessary interior improvements in the new premises substantially similar to those paid for by City pursuant to this Lease. All other costs of remodeling, outfitting and furnishing the new premises shall be paid by Grace. Grace shall arrange for the transfer of all utilities to the new premises, and shall execute and deliver any relevant documentation as City may prepare to memorialize the same.

11. INDEMNIFICATION AND GRACE'S INSURANCE: Grace, at its own cost and expense, shall obtain and maintain Comprehensive General Liability Insurance on the Premises for the joint and separate benefit of City and Grace in an amount not less than $1,000,000 for injury to or death of any person or persons, $2,000,000 for any one occurrence, and $500,000 for property damage, or in such higher limits as shall be reasonably required by City.

Grace will be responsible for any and all damages to Grace's inventory, furniture, fixtures and equipment, and will, at all times during the lease term and at its own cost expense, maintain all risk property insurance against damage by fire or other perils in an amount equal to the replacement value of all parts of the Premises for which the Grace is responsible. Each insurance policy shall be so written as to protect the City and the Grace, as their respective interests may appear, and all liability policies shall specifically name the City as an Additional Insured under the policy. If Grace fails to provide such insurance, City may terminate this lease with ten (10) days notice to Grace. Certificates of Insurance verifying all required insurance policies shall be delivered to the City prior to the Grace's occupancy or build-out of the leased space.

Grace agrees to look solely to the proceeds of Grace's own insurer for indemnity against exposure for casualty losses of property or business interruption. Grace warrants that its liability, property and business interruption insurers shall have no rights against City by virtue of assignment loan agreement or otherwise.

Grace shall indemnify City for and against any and all claims, demands, suits, actions and judgments of any kind or nature whatsoever, including costs and expenses, for any personal injury or property damage to any person, or property, arising or resulting, directly or indirectly, from the entry onto the Premises by Grace or Grace's agents.

12. ACCEPTANCE OF PREMISES: Grace hereby agrees to accept the Properties from the City as they are found by Grace in "as is and where is" condition.

13. ESTOPPEL CERTIFICATE: Grace shall, from time to time and within ten (10) days after request therefore by the City, execute, acknowledge and deliver to the City or its Agent a written Estoppel Certificate in recordable form. The Estoppel Certificate shall certify to the City, its Mortgagee or other party designated by the City, as of the date of such Estoppel Certificate that (a) the Grace is in possession of Premises and is currently paying the Base Rent reserved hereunder; (b) the following Lease dates are and have been established: the Commencement Date and Termination Date of the Lease and that date upon which the Grace started to pay rent; (c) that this Lease is unmodified and in full force and effect, or if there have been modifications, that the same are in full force and effect as modified and setting forth such modifications; (d) that there are no existing set-offs or defenses against the enforcement of any rights or remedies of the City, or any duty or obligation of the Grace, hereunder, and if so, specify the same in detail; and (e) that the Grace has no knowledge of any event having occurred that will authorize the termination of this Lease by the Grace, or that the Grace has no knowledge of any uncured defaults on the part of the City under this Lease, or if the Grace has such knowledge, specifying the same in detail. In the event that the Grace does not execute and deliver such Estoppel Certificate, as required herein, then this Article 12, for purposes of this Lease, shall be and shall constitute an Irrevocable Power of Attorney, appointing and designating the City, its successors and assignees, as the Grace's attorney-in-fact to execute and deliver such Estoppel Certificate as herein provided.

14. SUBORDINATION AND ATTORNMENT: Grace agrees that this Lease is subordinate to any mortgage or lien resulting from financing or refinancing, now or hereafter placed upon the land on which the Premises have been built or upon any building hereafter placed upon the land, of which the Premises are a part. Grace will further attorn to and acknowledge the foreclosure purchaser or purchasers as the City hereunder. This shall be self-operative and no further instrument of subordination shall be required by any mortgagee. However, Grace shall, upon the request of any party in interest, promptly execute such instrument or certificate to carry out the intent thereof. City agrees to use its best efforts to obtain a non-disturbance agreement.

15. QUIET ENJOYMENT: City hereby covenants that Grace, upon fully complying with and promptly performing all the terms, covenants and conditions of this Lease, on its part to be performed, and further, upon the prompt and timely payment of all rental sums due hereinunder, shall have and quietly enjoy the Premises for the Lease Term set forth herein.

16. MAINTENANCE BY CITY: City covenants that it will, at its own cost and expense and with reasonable dispatch after being notified in writing by Grace of the need therefore, make such repairs to the outside utility lines and exterior of the Premises, including the foundation, roof, gutters, down spouts and outside walls, but excepting all storefronts, glass, doors, awnings and canopies, as may be necessary to keep the same in a good, workmanlike condition of repair. Further, City, at its own cost and expense, will maintain the heating, ventilating and air conditioning system, a.k.a. the HVAC system (including compressors and other major components), wires and conduits, electric lines, electric panel boxes, and any outdoor lighting.

17. MAINTENANCE BY GRACE: Grace covenants that it will, during the Term hereof, maintain the interior of the Premises and perform routine repairs and maintenance to items such as toilets, pipes, plumbing, and so forth.

18. ADDITIONAL COVENANTS BY GRACE: Grace shall not make alterations, additions or improvements to the building structure of which the Premises are a part without first obtaining City's written approval and consent. For purposes of this Lease, the structural components of the building are hereby defined as the foundation, structural steel, roof, exterior walls, storefront components including storefront glass and doors, back doors, or loading doors, existing interior plumbing improvements, exterior plumbing lines, HVAC unit components and ductwork, electric service, ceiling and light fixtures and common areas. Grace shall present to City plans and specifications for any such work at the time approval is sought from City for Grace structural modifications.

Grace has the right to install its store trade fixtures in the Premises, provided that such installation does not damage the construction of the building nor interfere with the structural components of the building of which the Premises are a part. Such installations shall be at the sole risk and at the expense of the Grace. All fixtures installed by Grace shall remain the property of Grace, and if the Grace is not in default of the Lease, its terms and covenants herein, the same fixtures shall be removed by Grace at the expense of the Grace at the end of the Lease. Grace further agrees to repair and/or to reimburse City for the cost of repair for any damages to the Premises caused by the installation and removal of its trade fixtures. In the event that fixtures are left behind or abandoned, Grace shall pay to City any expenses associated with repairs to the Premises caused by the removal of same fixtures.

Grace's signage is subject to and shall be within the sign criteria established by the Department of City Planning of the City of Norfolk. Design of storefront signage and fabrication and installation of the same shall be approved by the City or its Agent in writing prior to sign installation by Grace at Grace's expense. Grace further agrees to maintain such storefront signage, awning signs, canopy signs, show window lettering, door signs or additional similar advertising signs in a good condition of repair and attractive display at all times.

Signs installed by Grace are the property of Grace, and if Grace is not in default hereunder, shall also be removed by Grace at the end of the Lease Term at Grace's expense. Signs that are left behind or abandoned become the property of the City. If Grace abandons sign upon termination of this Lease, or sooner, City shall have the right to remove the sign and Grace agrees to be responsible and liable for the cost of such removal and the cost of such repairs occasioned by same removal.

Grace will not use nor permit the Premises to be used for any illegal or immoral purpose. Grace hereby agrees to comply with all Federal, State and Municipal laws, ordinances and regulations as they relate to Grace's business and/or to the Premises in which the Grace's business is located, and the use, storage and disposal of hazardous substances.

Grace shall not make any use of the Premises, which would make voidable or void any policy of fire or extended coverage insurance covering any of the buildings or cause the buildings to become uninsurable. Grace covenants that, without prior written consent of the City, Grace will not do anything which will increase the rate of fire insurance premium on the building. If by reason of any use by Grace of the Premises or the keeping by Grace of any flammable substances in the Premises, the hazardous insurance premiums or policies maintained by City shall be

increased over normal rates for the building, the amount of the increase in the City insurance premium shall be paid to City by Grace from time to time on demand. Grace hereby covenants that it shall cease and desist any activity so affecting the insurability of the Premises upon written demand of the City.

Grace will not use nor permit to be used any advertising medium or device such as audio broadcast, loudspeaker, radio, public address system, remote radio station, or flashing or digital reader sign, without the prior written consent of the City.

Grace shall not hold any fire, bankruptcy, and going-out of business or auction sales, without the prior written consent of the City.

Grace shall not use the sidewalks or any other portions of the common areas for any purpose related to the selling of merchandise or services without the City's consent in writing.

Grace shall notify City in writing of all accidents or security-related incidents, i.e. crimes against person(s) and property, which occur in or about the Premises.

Grace is hereby responsible and liable for any freezing in pipes and/or within plumbing fixtures and shall pay for the damages incurred. Grace shall keep the Premises at a sufficient temperature to prevent such freezing or make such arrangements with the local Utility to prevent freeze-ups.

19. CITY'S INSPECTION AND ACCESS: City or its Agent, employees and/or contractors shall have the right to enter the Premises at any reasonable time to examine the same; to show the Premises to prospective purchasers, lenders, or prospective Graces of the Premises; and to make such repairs, alterations, improvements or additions as City may deem necessary or desirable. If Grace is not personally present to permit entry and an entry is necessary, City or its Agent may, in the case of emergency, or if the Premises are unsecured and temporarily unoccupied, forcibly enter or secure the same, or take such other steps to address the emergency that City deems appropriate, without rendering City liable therefore. Otherwise, all such work and installation shall be done, so far as practical, so as not to unreasonably interfere with Grace's use of the Premises. Grace also hereby grants unto City and its Agent the right, within four (4) months prior to the Termination Date, to post and to remain thereon, without hindrance or destruction, the usual notice of "For Rent" on the storefront glass or front walls of said Premises. The exercise of any of these reserved rights by City shall not be deemed as an eviction or disturbance of Grace's use, possession and quiet enjoyment of the Premises, and shall never render City liable in any manner to Grace or any other person.

20. WAIVER OF SUBROGATION: City and Grace waive all right of recovery against each other for any loss in or about the Properties, from perils insured against and under the fire insurance contract, including any all risk endorsements thereof, whether due to negligence or any other cause. This release of liability shall be operative only as long as waiver of subrogation clauses are available on insurance policies, in the amounts, form, kinds and with a company satisfactory to City.

21. INDEMNITY AGAINST LIENS: Grace agrees that it will, at all times during this Lease, take any and all steps necessary to prevent the filing of mechanics liens against the Premises. Grace further agrees to indemnify and save the City harmless from and against any and all liabilities incurred by Grace or claimed or charged against the Premises. Grace shall promptly pay, or otherwise discharge, any and all such claims, expenses and liens, including the mechanic's materialmen's and other laborer's liens asserted or claimed against the Premises or any part thereof. In no event shall City or any of the City's property be liable for or chargeable with any expense or lien for work, labor or materials used for and in the Premises; or for any improvements thereof or changes made upon the order of Grace, or to discharge the obligations of the Grace.

22. FIRE AND/OR DESTRUCTION: If the Premises shall be damaged by fire or other casualty during the Term hereof, City agrees that it will restore the structural components and items, as defined in Section 16 hereof, with reasonable dispatch to substantially the same condition that they were in so far as the proceeds from City's insurance permit and, further provided that, City's mortgagee does not require insurance proceeds to be paid to it. Once City restoration work is complete, and since time is of the essence, Grace's rent payment shall re-commence on the date that Grace reopens for business but no later than the sixtieth (60th) day after City notifies Grace in writing that the Premises are ready for fixturing. The Grace shall be responsible, at its sole cost and expense, to repair or replace any and all of the Grace's fixtures, equipment and leasehold improvements, which were damaged or destroyed by the same insured cause. The rent payable hereunder shall be equitably and proportionately abated, according to loss of use to Grace, during the period of time intervening between the date of such fire and/or destruction and the date that the Premises are restored. However, if the damage is due to the fault or the negligence of the Grace or its employees, there shall be no abatement of rent. If such destruction occurs, during the last two (2) years of the term and exceeds fifty percent (50%) of the insurable value of the Premises at the time of such destruction occurs, City, at its option, may terminate this Lease as of the date of such destruction by giving Grace written notice of its intention to do so within sixty (60) days after such date of destruction. If this Lease is so terminated, then the rent payable hereunder shall be abated as of the date of same destruction and Grace shall remove all its property from the Premises within thirty (30) days after the receipt of written notice of termination. Unless City gives such notice, this Lease shall remain in full force and effect and City shall repair such damage as its expense, as expeditiously as possible under the circumstances. Notwithstanding the foregoing, in the event of damage to the Premises by fire or casualty which is not the result of Grace's negligence, and which cannot be repaired within one hundred eighty (180) days of occurrence, City or Grace shall have the right to terminate this Lease by giving the other party thirty (30) days prior written notice.

23. FORCE MAJEURE: In the event that either party hereto shall be delayed or hindered in, or prevented from, the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature, not the fault of the party delayed in performing the work or doing acts required under the terms of this Lease, then performance of such acts shall be excused for the period of the delay; and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, that the provisions of this Lease shall not operate to release Grace from this

Lease nor to excuse Grace, nor shall Grace in any event be excused from prompt payment of rent and adjustments, and all other charges due to City by Grace.

24. EMINENT DOMAIN: If all the Premises are condemned or taken by the power of eminent domain exercised by any governmental or quasi-governmental authority, this Lease shall terminate as of the date that the Grace is required to vacate the Premises and all Rent shall be paid up to and until same date of termination. If only part of the Premises shall be taken and the size of the Premises are proportionately reduced, then the Grace is entitled to an equal and proportionate reduction in Rent. Further, City shall, as expeditiously as possible, repair the remaining portion of Premises to the extent necessary to render the same suitable for which the Premises were leased. Grace hereby waives any right that it may have to any condemnation award or sum paid under threat of condemnation as a result of a complete or partial taking of the Premises and/or any portion of the common areas. If there is only a partial taking of the common areas, this Lease shall not terminate and this Lease shall remain in full force and in effect. After partial taking of the common areas, the City, within a reasonable time thereafter, shall repair or reconstruct the remaining portion of the common areas to the extent necessary to make the same a complete architectural unit.

25. GRACE'S DEFAULT: The occurrence of any one of the following events constitutes a default by the Grace and a breach of this Lease and its covenants by the Grace, if such default, breach or non performance is continued and not cured within ten (10) days after written notice from City: (a) The vacating or abandonment of the Premises by Grace, or the failure of the Grace to be open for business and for the conduct of business as described in the Use Clause Article found in this Lease Agreement, (b) The failure by Grace to make any payment of rent and adjustments on or before the due date thereof, (c) The failure by Grace to perform any covenants herein or the breach by Grace of any Lease covenants herein, other than those described in this section, and the further failure by Grace to cure such covenant breach or non-performance, or to commence to cure and diligently pursue the cure of the covenant breach or non-performance which cannot be fully remedied within ten (10) days, (d) Petition by Grace for bankruptcy, insolvency, or general assignment for the benefit of its creditors, or receiver appointment for Grace for the substantial part of its assets and properties and such receiver is not removed with ten (10) days after its appointment, (e) If the Grace shall default as described in this section, or in the performance of any covenant contained in this Lease, and if such default is repeated once within the next twelve months then, notwithstanding that such defaults shall have been cured within the period after notice as herein provided, any further similar default within such twelve month period shall be deemed a Grace Default which cannot be cured, notwithstanding provisions for cure provided in this Lease. Upon such default, the City may proceed, with five days notice but no opportunity for cure, to exercise its remedies upon default.

26. CITY'S REMEDIES: In the event of Grace Default, including Grace's abandonment or vacating the Premises, City shall have the right, in addition to all other rights and remedies provided by the law, to terminate this Lease, and/or to re-enter and take possession of the Premises, peaceably or by force, and/or to change the locks thereto and to remove any property and merchandise therein, without liability to Grace for damage arising therefrom and without obligation to Grace to store any merchandise and property. Any costs of removal and storage of Grace's fixtures, inventory, equipment or any other personal property shall be the expense of Grace

and shall be added to all sums owed by Grace to City. Further, City is under no obligation to Grace, after default or abandonment, to relet the Premises in the name of Grace or for the benefit of the City. City may, at its option and without subsequent notice to Grace, re-let the Premises for such term and on such covenants and purposes as City, in its sole discretion, may determine are in the best interest of the City. City may collect and receive all rents derived therefrom and apply the same, after deduction of appropriate expenses, to the payment of the rent overdue and payable hereunder from the Grace in default. The Grace in default shall remain liable for any deficiency. Further, City shall not be responsible for or liable for any failure to re-let the Premises or any part hereof, or for any failure to collect any rent connected therewith. The City's recovery of possession of the Premises by any means shall not relieve the Grace of its obligation to pay rent and adjustments through the term of the Lease, including any extensions in effect at the time of default under which Grace then occupies the Premises.

Acceptance by City of delinquent rent from Grace after Grace Default shall not cure such default or entitle Grace to possession of the Premises. Grace hereby expressly waives any and all rights of redemption, if any, granted by and under any present or future law, in the event that Grace shall be evicted or dispossessed for any cause in default or in the event that the City obtains possession of the Premises by virtue of the remedies outlined in this Lease, or otherwise. The receipt by City of rent with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by City of any covenant hereof shall be deemed to have been agreed upon, unless explicitly reduced to written agreement and signed by City and Grace.

All remedies of City shall be cumulative.

27. ATTORNEYS' FEES: Grace hereby agrees to pay all costs incurred by the City on account of the Grace's default, including but not limited to collection costs, court costs and attorney fees in an amount equal to twenty-five percent (25%) of any money owed to City by Grace at the time and accruing after City requests the assistance of an attorney. If Grace's default is a non-monetary default, Grace shall pay the greater of Two Hundred Fifty Dollars ($250.00) or City's actual attorney's fees.

28. TERMINATION AND SURRENDER: Upon the Termination Date of this Lease, Grace shall surrender the Premises to City in as good condition as they were found upon the Grace taking possession of the Premises; except for ordinary wear and tear, reduction of the Premises by condemnation or damage by fire, destruction or other casualties or causes beyond Grace's control. Grace shall deliver to City or its Agent all keys to the Premises and remove all its personal property, merchandise and trade fixtures. After Grace vacation or Grace abandonment, City may elect to retain or dispose of, in any manner, Grace alterations and improvements or Grace's personal property that Grace does not remove from the Premises before or after the Termination Date. Title to any such Grace alterations or Grace's personal property, that City elects to retain or dispose of after the Termination Date, shall vest to and in the City. Grace waives all claims against City for any damage to Grace resulting from City's retention or disposition of any such alterations or personal property. Grace is further liable to City for City's expenses and costs for removing and disposing of any Grace alterations or Grace personal property, which City does not elect to acquire.

29. WAIVERS: The failure of City to insist, in any one or more instances, to strict performance by Grace as to any Lease covenants shall, not be construed as a waiver by City or relinquishment, in the future, of such covenants, but the same shall continue and remain in full force and effect. The receipt by City or its Agent of rent with knowledge of a covenant breach hereof shall not be deemed a waiver of the same covenant breach, and no waiver by City of any provision hereof shall be deemed to have been agreed upon unless expressed in writing and signed by the parties hereto.

Grace hereby waives the benefit of the homestead exemption as to this Lease.

30. EXCULPATION: The term "City" as used in this Lease means only the owner, for the time being or at the time of Lease execution by Grace, of the building in which the Premises are located or the owner of a Lease of both said building and the land thereunder. City shall be liable for the performance of its obligations hereunder only to the extent of City's assets as they pertain to the Premises. The City and its officers, agents, employees, successors and assignees shall not be liable personally. Further, the liability of the City shall not extend beyond the period of time of City's ownership of the Premises.

31. SUCCESSORS AND ASSIGNS: All the terms, covenants and agreements of this Lease shall extend to and be binding upon the City and be binding upon the Grace and its respective heirs, administrators, executors, successors, assignees, subGraces, concessionaires, marital communities, if any, and their respective assigns; and/or upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

32. NOTICES: Any notice herein provided for to be given to City shall be deemed to be given if and when posted in United States registered or certified mail, postage prepaid, addressed to:

CITY'S NOTICE ADDRESS:
Marcus D. Jones, City Manager
City Manager's Office
810 Union Street, Suite 1100
Norfolk, Virginia 23510

Copy to:
Jim Resolute
Department of Real Estate
232 E Main Street, Suite 250
Norfolk, Virginia 23510

GRACE'S NOTICE ADDRESS:
Grace's Tailor Shop, Inc.
130 Bank Street
Norfolk, Virginia 23510

Any notice herein provided for to be given to Grace shall be deemed to be given if and when posted in United States registered or certified mail, postage prepaid.

Either party may, at any time, change its address for the purposes of notice hereof by sending a written notice to the other party stating the change and setting forth the new address.

33. SALES OR LEASEHOLD TAXES: Grace will be responsible for the payment of any sales or leasehold tax, or other tax, levied by any governmental authority. Such tax payment shall be paid directly to the appropriate governmental authority by Grace promptly after receipt of any such tax bill.

34. AMERICANS WITH DISABILITIES ACT: In the event that any federal, state, or local government authority (the "Applicable Authority") with jurisdiction determines that the exterior and/or interior of the Premises are not in compliance with the Americans with Disabilities Act of 1990 (the "ADA"), City, at its sole cost, agrees to take such remedial action as is required by the Applicable Authority pursuant to the ADA to correct or remedy such noncompliance. Alternatively, if in City's judgment the remedial or corrective measures proposed by the Applicable Authority do not have to be performed in order for City to be in compliance with the ADA, City may contest, at its sole cost, such matter in lieu of performing the remedial action. However, upon final judgment being entered against City in a court of competent jurisdiction with regard to ADA requirements, City agrees to take such remedial actions, at its sole cost, as ordered by such court.

35. BROKER: Grace is not represented by a Broker in this transaction.

36. ENTIRE AGREEMENT: This Lease contains the entire agreement of the parties hereto. Any and all oral or written agreements understandings, representations and warranties, promises and statements of the parties hereto or from their respective officers and directors or from their partners, Agents or brokers with respect to the subject matter of this Lease, and any matter not covered and mentioned in this Lease, shall be inferior and be merged in and by this Original Lease. No such prior oral or written agreement, understanding, representation or warranty, promise or statement shall be effective or binding for any reason or purpose, unless specifically set forth in this original Lease. No provision of this Lease may be amended or added to except by an agreement in writing, signed by the parties hereto or their respective successors in interest. This Lease shall not be effective or binding on any party until fully executed by both parties hereto.

37. SEVERABILITY: In the event that any provision herein is unlawful, or otherwise unenforceable, it shall be severed and deemed null and void and shall not impair the validity of the remaining provisions of this Lease.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

CITY OF NORFOLK

By:_____(SEAL)
City Manager

Attest:

_____
City Clerk

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City of Norfolk, in the Commonwealth of Virginia, whose term of office expires on the ____ day of _____, 20___, do hereby certify that Marcus D. Jones, City Manager, or his duly authorized Assistant City Manager, and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing Lease Agreement, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this _____ day of _____, 2016.

_____
Notary Public
Registration No._____

Approved as to Contents:

_____
Director of General Services

Approved as to Form and Correctness:

_____
Deputy City Attorney

GRACE'S TAILOR SHOP, INC.

By:_____
Name (Printed): _____
Title: _____

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City of Norfolk, in the Commonwealth of Virginia, whose term of office expires on the ___ day of _____, 20___, do hereby certify that _____, _____ (Title) of Grace's Tailor Shop, Inc., whose name is signed to the foregoing Lease Agreement, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this _____ day of _____, 2016.

_____
Notary Public
Registration No._____

City of NORFOLK

C: Dir., Department of General Services

To the Honorable Council
City of Norfolk, Virginia

April 26, 2016

From: David S. Freeman, AICP
Director of General Services

Subject: Lease Agreement between the City of Norfolk and Corks and Caps, LLC

Reviewed: Sabrina Joy-Hogg
Sabrina Joy-Hogg, Deputy City Manager

Ward/Superward: 2/6

Approved: Marcus D. Jones
Marcus D. Jones, City Manager

Item Number: **PH-4**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Corks and Caps, LLC
240 E. Main Street
Norfolk, VA

III. **Description:**
This agenda item is an ordinance to approve a lease agreement between the City of Norfolk (the "city") and Corks and Caps, LLC ("C & C") for city-owned property located at 240 E. Main Street.

IV. **Analysis**
This lease agreement will permit C & C to lease city-owned property for use as a wine and food retail shop. The term of the proposed lease is five (5) years, commencing on June 1, 2016 and terminating on May 31, 2021. This business would be relocating from their current location on Granby Street into the larger space being offered by the city at 240 E. Main St.

V. **Financial Impact**
The rent will be subject to a 3% annual escalation. C & C has also requested a three month rent abatement for the build out of the space.

Term	Monthly Rent	Annual Rent	Price Per Sq. Ft.
06/01/2016 – 08/31/2016	Rent abated – build out	N/A	N/A
09/01/2016 – 05/31/2017	$1,838.38	$16,545.42	$16.50
06/01/2017 – 05/31/2018	$1,894.08	$22,729.00	$17.00
06/01/2018 – 05/31/2019	$1,950.91	$23,410.87	$17.51
06/01/2019 – 05/31/2020	$2,009.96	$24,119.48	$18.04
06/01/2020 – 05/31/2021	$2,070.12	$24,841.46	$18.58

810 Union Street #1101 ▪ Norfolk, Virginia 23510
Phone: 757-664-4242 ▪ Fax: 757-664-4239

Liability insurance for 240 E. Main Street (Corks and Caps, LLC)	The City has been named as an additional insured in the amount of $1,000,000 per occurrence; therefore, there should be no financial risk to the City

VI. Environmental

There are no known environmental issues associated with this property.

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the city's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of General Services – Office of Real Estate and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Exhibit A to Ordinance – Proposed Lease Agreement
- Current Floor Plan for space

3/24/2016 -wld

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____ for DSF
DEPT. General Services

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING A LEASE AGREEMENT WITH CORKS AND CAPS, LLC FOR THE LEASE OF CITY OWNED PROPERTY LOCATED AT 240 E. MAIN STREET.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Lease Agreement, a copy of which is attached hereto as Exhibit A, between the City of Norfolk ("City") and Corks and Caps, LLC ("C&C"), whereby the City leases certain property located at 240 E. Main Street to C&C for use as a wine and food retail shop, is hereby approved.

Section 2:- That the City Manager and other proper officers of the City are authorized to execute the Lease on behalf of the City and to do all things necessary and proper to carry out its terms.

Section 3:- That the City Manager is further authorized to correct, amend or revise the Lease Agreement as he may deem advisable in order to carry out the intent of the Council.

Section 4:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

EXHIBIT A TO ORDINANCE

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") made this _____ day of _____, 2016, by and between the **CITY OF NORFOLK,** a municipal corporation of the Commonwealth of Virginia, Lessor, and **CORKS AND CAPS, LLC,** a Virginia corporation, Lessee.

WITNESSETH:

1. **PREMISES**. Lessor, for and in consideration of the rents, covenants and agreements hereinafter mentioned, reserved and contained, to be paid, kept and performed by Lessee, does hereby demise and lease unto Lessee, and Lessee does hereby lease from Lessor, the property owned by the City of Norfolk located at 240 E. Main Street, 1,337 square feet in area, as shown in Exhibit A attached hereto ("Premises").

2. **USE.** Lessee covenants and agrees to use and occupy Premises for the operation of a wine and food retail shop and for no other purpose.

3. **LEASE TERM.** This lease agreement is for a five year term and will commence on June 1, 2016 ("Commencement Date") and will terminate on May 31, 2021 ("Termination Date"), subject to the default provisions contained in Section 24.

4. **EARLY TERMINATION.** Lessee may vacate Premises at any time, upon sixty (60) day's prior written notice to Lessor, provided that Lessee is not in default of any condition or term of this Lease Agreement. Lessor may terminate this Lease, without cause, upon sixty (60) day's prior written notice to Lessee.

5. **RENT:** Rent shall be made payable to the Norfolk City Treasurer and shall be in such sums as are set forth in the table below. The rent amount will increase 3% annually in each successive year of the lease.

Term	Rent PSF	Annual Rent	Monthly Rent
06/01/2016-08/31/2016	N/A	N/A	Rent abated – build out
09/01/2016-05/31/2017	$16.50	$16,545.42	$1,838.38
06/01/2017-05/31/2018	$17.00	$22,729.00	$1,894.08
06/01/2018-05/31/2019	$17.51	$23,410.87	$1,950.91
06/01/2019-05/31/2020	$18.04	$24,119.48	$2,009.96
06/01/2020-05/31/2021	$18.58	$24,841.46	$2,070.12

The rent shall be paid in monthly installments, notwithstanding the 90 day buildout period stated above, made promptly on the first day of each month during the term of this Lease without demand and without offset or deduction. No payment by Lessee or receipt by Lessor of a lesser amount than the monthly installment stipulated in this Lease shall be deemed other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or payment, or any writing accompanying any check or payment of such rent, be deemed an accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such rent or pursue any other remedy provided in this Lease.

6. **PAST DUE RENT AND LATE CHARGES:** Lessee hereby acknowledges that late payment by Lessee to Lessor of rent or other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. In the event Lessee shall fail to pay, when the same is due and payable, any Rent, charges or adjustments, and if said sums have not been paid within five (5) days of their due date, then Lessee shall pay to Lessor a "Late Charge" of five percent (5%) of the amount due on all rents. Lessee further covenants and agrees to pay Lessor as a "bad check" or returned check charge the amount of Fifty Dollars ($50.00) per bad check.

7. **SECURITY DEPOSIT**: Lessee has deposited with Lessor a security deposit of One Thousand Eight Hundred Thirty Eight Dollars and 0/100 ($1,838.38) ("Deposit"), which shall be held by Lessor, without liability for interest thereon, as security for the full and faithful performance by Lessee of each and every term, covenant, and condition of this Lease on the part of Lessee to be observed and performed.

If any sum payable by Lessee to Lessor shall be overdue and unpaid, if Lessor shall make payments on behalf of Lessee, or if Lessee shall fail to perform any of the terms or covenants of this Lease, then Lessor, at its option, and without prejudice to any other remedy which Lessor may have on account thereof, may appropriate and apply the Deposit, or so much thereof as may be necessary, to compensate Lessor for the payment of such sums due or for any loss, damage or expense sustained from such default. In such event, Lessee, promptly upon demand, shall restore the Deposit to the full amount. In the event Lessee shall fully and faithfully comply with all of the terms, covenants and conditions of this Lease, the Deposit shall be returned in full to Lessee following the Termination Date and the surrender of the Premises by Lessee.

In the event any bankruptcy, insolvency, reorganization, or other creditor-debtor proceedings shall be instituted by or against Lessee, the Deposit shall be deemed to be applied first to the payment of any rents and/or other charges due Lessor for all periods prior to the institution of such proceedings and the balance, if any, of such Deposit may be retained by Lessor in partial satisfaction of Lessor's damages.

8. **UTILITIES AND OTHER COSTS:** Lessee will pay all charges when due for water and sewerage, gas and electricity and other utility charges and utility taxes in connection with the Premises. Lessee will also be responsible for all janitorial costs.

9. NO JOINT VENTURE: It is hereby agreed that nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Lessor and Lessee, or between Lessor and any other party, or cause either party to be responsible in any way for the debts or obligations of the other party.

10. NO ASSIGNMENT OR SUBLEASE: Lessee covenants not to assign, mortgage or encumber this Lease nor sublet or suffer or permit the Premises or any portion thereof to be used by others without the prior written consent of the Lessor in each instance. The transfer of fifty percent (50%) or more of Lessee's stock, if Lessee is a corporation, or the transfer of twenty-five percent (25%) or more partnership interest in Lessee, if Lessee is a partnership, or the dissolution of Lessee as a corporation or partnership, is regarded as an assignment of the Lease, and the same is not permitted without the prior written consent of the Lessor. Lessee and any guarantors shall remain liable for this Lease, its terms and covenants in such event that the Lessor does grant consent to an assignment or sublease, and shall guarantee the performance of the assignee or sublessee without the need for guarantor's signature or consent thereto.

11. INDEMNIFICATION AND LESSEE'S INSURANCE: Lessee, at its own cost and expense, shall obtain and maintain Comprehensive General Liability Insurance on the Premises for the joint and separate benefit of Lessor and Lessee in an amount not less than $1,000,000 for injury to or death of any person or persons, $2,000,000 for any one occurrence, and $500,000 for property damage, or in such higher limits as shall be reasonably required by Lessor.

Lessee will be responsible for any and all damages to Lessee's inventory, furniture, fixtures and equipment, and will, at all times during the lease term and at its own cost expense, maintain all risk property insurance against damage by fire or other perils in an amount equal to the replacement value of all parts of the Premises for which the Lessee is responsible. Each insurance policy shall be so written as to protect the Lessor and the Lessee, as their respective interests may appear, and all liability policies shall specifically name the Lessor as an Additional Insured under the policy. If Lessee fails to provide such insurance, Lessor may terminate this lease with ten (10) days notice to Lessee. Certificates of Insurance verifying all required insurance policies shall be delivered to the Lessor prior to the Lessee's occupancy or build-out of the leased space.

Lessee agrees to look solely to the proceeds of Lessee's own insurer for indemnity against exposure for casualty losses of property or business interruption. Lessee warrants that its liability, property and business interruption insurers shall have no rights against Lessor by virtue of assignment loan agreement or otherwise.

Lessee shall indemnify Lessor for and against any and all claims, demands, suits, actions and judgments of any kind or nature whatsoever, including costs and expenses, for any personal injury or property damage to any person, or property, arising or resulting, directly or indirectly, from the entry onto the Premises by Lessee or Lessee's agents.

12. ACCEPTANCE OF PREMISES: Lessee hereby agrees to accept the Properties from the Lessor as they are found by Lessee in "as is and where is" condition.

13. ESTOPPEL CERTIFICATE: Lessee shall, from time to time and within ten (10) days after request therefore by the Lessor, execute, acknowledge and deliver to the Lessor or its Agent a written Estoppel Certificate in recordable form. The Estoppel Certificate shall certify to the Lessor, its Mortgagee or other party designated by the Lessor, as of the date of such Estoppel Certificate that (a) the Lessee is in possession of Premises and is currently paying the Base Rent reserved hereunder; (b) the following Lease dates are and have been established: the Commencement Date and Termination Date of the Lease and that date upon which the Lessee started to pay rent; (c) that this Lease is unmodified and in full force and effect, or if there have been modifications, that the same are in full force and effect as modified and setting forth such modifications; (d) that there are no existing set-offs or defenses against the enforcement of any rights or remedies of the Lessor, or any duty or obligation of the Lessee, hereunder, and if so, specify the same in detail; and (e) that the Lessee has no knowledge of any event having occurred that will authorize the termination of this Lease by the Lessee, or that the Lessee has no knowledge of any uncured defaults on the part of the Lessor under this Lease, or if the Lessee has such knowledge, specifying the same in detail. In the event that the Lessee does not execute and deliver such Estoppel Certificate, as required herein, then this Article 12, for purposes of this Lease, shall be and shall constitute an Irrevocable Power of Attorney, appointing and designating the Lessor, its successors and assignees, as the Lessee's attorney-in-fact to execute and deliver such Estoppel Certificate as herein provided.

14. SUBORDINATION AND ATTORNMENT: Lessee agrees that this Lease is subordinate to any mortgage or lien resulting from financing or refinancing, now or hereafter placed upon the land on which the Premises have been built or upon any building hereafter placed upon the land, of which the Premises are a part. Lessee will further attorn to and acknowledge the foreclosure purchaser or purchasers as the Lessor hereunder. This shall be self-operative and no further instrument of subordination shall be required by any mortgagee. However, Lessee shall, upon the request of any party in interest, promptly execute such instrument or certificate to carry out the intent thereof. Lessor agrees to use its best efforts to obtain a non-disturbance agreement.

15. QUIET ENJOYMENT: Lessor hereby covenants that Lessee, upon fully complying with and promptly performing all the terms, covenants and conditions of this Lease, on its part to be performed, and further, upon the prompt and timely payment of all rental sums due hereinunder, shall have and quietly enjoy the Premises for the Lease Term set forth herein.

16. MAINTENANCE BY LESSOR: Lessor covenants that it will, at its own cost and expense and with reasonable dispatch after being notified in writing by Lessee of the need therefore, make such repairs to the outside utility lines and exterior of the Premises, including the foundation, roof, gutters, down spouts and outside walls, but excepting all storefronts, glass, doors, awnings and canopies, as may be necessary to keep the same in a good, workmanlike condition of repair. Further, Lessor, at its own cost and expense, will maintain the heating, ventilating and air conditioning system, a.k.a. the HVAC system (including compressors and other major components), wires and conduits, electric lines, electric panel boxes, and any outdoor lighting, except where any of these items are installed by the Lessee to serve the Lessee's business.

17. MAINTENANCE BY LESSEE: Lessee covenants that it will, during the Term hereof, maintain the interior of the Premises and perform routine repairs and maintenance to items such as toilets, pipes, plumbing, and any fixtures installed by Lessee to serve the Lessee's business.

18. ADDITIONAL COVENANTS BY LESSEE: Lessee shall not make alterations, additions or improvements to the building structure of which the Premises are a part without first obtaining Lessor's written approval and consent. For purposes of this Lease, the structural components of the building are hereby defined as the foundation, structural steel, roof, exterior walls, storefront components including storefront glass and doors, back doors, or loading doors, existing interior plumbing improvements, exterior plumbing lines, HVAC unit components and ductwork, electric service, ceiling and light fixtures and common areas. Lessee shall present to Lessor plans and specifications for any such work at the time approval is sought from Lessor for Lessee structural modifications.

Lessee has the right to install its store trade fixtures in the Premises, provided that such installation does not damage the construction of the building nor interfere with the structural components of the building of which the Premises are a part. Such installations shall be at the sole risk and at the expense of the Lessee. All fixtures installed by Lessee shall remain the property of Lessee, and if the Lessee is not in default of the Lease, its terms and covenants herein, the same fixtures shall be removed by Lessee at the expense of the Lessee at the end of the Lease. Lessee further agrees to repair and/or to reimburse Lessor for the cost of repair for any damages to the Premises caused by the installation and removal of its trade fixtures. In the event that fixtures are left behind or abandoned, Lessee shall pay to Lessor any expenses associated with repairs to the Premises caused by the removal of same fixtures.

Lessee's signage is subject to and shall be within the sign criteria established by the Department of City Planning of the City of Norfolk. Design of storefront signage and fabrication and installation of the same shall be approved by the Lessor or its Agent in writing prior to sign installation by Lessee at Lessee's expense. Lessee further agrees to maintain such storefront signage, awning signs, canopy signs, show window lettering, door signs or additional similar advertising signs in a good condition of repair and attractive display at all times.

Signs installed by Lessee are the property of Lessee, and if Lessee is not in default hereunder, shall also be removed by Lessee at the end of the Lease Term at Lessee's expense. Signs that are left behind or abandoned become the property of the Lessor. If Lessee abandons sign upon termination of this Lease, or sooner, Lessor shall have the right to remove the sign and Lessee agrees to be responsible and liable for the cost of such removal and the cost of such repairs occasioned by same removal.

Lessee will not use nor permit the Premises to be used for any illegal or immoral purpose. Lessee hereby agrees to comply with all Federal, State and Municipal laws, ordinances and regulations as they relate to Lessee's business and/or to the Premises in which the Lessee's business is located, and the use, storage and disposal of hazardous substances.

Lessee shall not make any use of the Premises, which would make voidable or void any policy of fire or extended coverage insurance covering any of the buildings or cause the buildings

to become uninsurable. Lessee covenants that, without prior written consent of the Lessor, Lessee will not do anything which will increase the rate of fire insurance premium on the building. If by reason of any use by Lessee of the Premises or the keeping by Lessee of any flammable substances in the Premises, the hazardous insurance premiums or policies maintained by Lessor shall be increased over normal rates for the building, the amount of the increase in the Lessor insurance premium shall be paid to Lessor by Lessee from time to time on demand. Lessee hereby covenants that it shall cease and desist any activity so affecting the insurability of the Premises upon written demand of the Lessor.

Lessee will not use nor permit to be used any advertising medium or device such as audio broadcast, loudspeaker, radio, public address system, remote radio station, or flashing or digital reader sign, without the prior written consent of the Lessor.

Lessee shall not hold any fire, bankruptcy, and going-out of business or auction sales, without the prior written consent of the Lessor.

Lessee shall not use the sidewalks or any other portions of the common areas for any purpose related to the selling of merchandise or services without the Lessor's consent in writing.

Lessee shall notify Lessor in writing of all accidents or security-related incidents, i.e. crimes against person(s) and property, which occur in or about the Premises.

Lessee is hereby responsible and liable for any freezing in pipes and/or within plumbing fixtures and shall pay for the damages incurred. Lessee shall keep the Premises at a sufficient temperature to prevent such freezing or make such arrangements with the local Utility to prevent freeze-ups.

Lessee shall be required to obtain and maintain, at its own cost and expense, any and all licenses or permits required for development of its business, and any operational or logistical licenses or permits required for any construction work to be completed by Lessee.

19. LESSOR'S INSPECTION AND ACCESS: Lessor or its Agent, employees and/or contractors shall have the right to enter the Premises at any reasonable time to examine the same; to show the Premises to prospective purchasers, lenders, or prospective Lessees of the Premises; and to make such repairs, alterations, improvements or additions as Lessor may deem necessary or desirable. If Lessee is not personally present to permit entry and an entry is necessary, Lessor or its Agent may, in the case of emergency, or if the Premises are unsecured and temporarily unoccupied, forcibly enter or secure the same, or take such other steps to address the emergency that Lessor deems appropriate, without rendering Lessor liable therefore. Otherwise, all such work and installation shall be done, so far as practical, so as not to unreasonably interfere with Lessee's use of the Premises. Lessee also hereby grants unto Lessor and its Agent the right, within four (4) months prior to the Termination Date, to post and to remain thereon, without hindrance or destruction, the usual notice of "For Rent" on the storefront glass or front walls of said Premises. The exercise of any of these reserved rights by Lessor shall not be deemed as an eviction or disturbance of Lessee's use, possession and quiet enjoyment of the Premises, and shall never render Lessor liable in any manner to Lessee or any other person.

20. WAIVER OF SUBROGATION: Lessor and Lessee waive all right of recovery against each other for any loss in or about the Properties, from perils insured against and under the fire insurance contract, including any all risk endorsements thereof, whether due to negligence or any other cause. This release of liability shall be operative only as long as waiver of subrogation clauses are available on insurance policies, in the amounts, form, kinds and with a company satisfactory to Lessor.

21. INDEMNITY AGAINST LIENS: Lessee agrees that it will, at all times during this Lease, take any and all steps necessary to prevent the filing of mechanics liens against the Premises. Lessee further agrees to indemnify and save the Lessor harmless from and against any and all liabilities incurred by Lessee or claimed or charged against the Premises. Lessee shall promptly pay, or otherwise discharge, any and all such claims, expenses and liens, including the mechanic's materialmen's and other laborer's liens asserted or claimed against the Premises or any part thereof. In no event shall Lessor or any of the Lessor's property be liable for or chargeable with any expense or lien for work, labor or materials used for and in the Premises; or for any improvements thereof or changes made upon the order of Lessee, or to discharge the obligations of the Lessee.

22. FIRE AND/OR DESTRUCTION: If the Premises shall be damaged by fire or other casualty during the Term hereof, Lessor agrees that it will restore the structural components and items, as defined in Section 17 hereof, with reasonable dispatch to substantially the same condition that they were in so far as the proceeds from Lessor's insurance permit and, further provided that, Lessor's mortgagee does not require insurance proceeds to be paid to it. Once Lessor restoration work is complete, and since time is of the essence, Lessee's rent payment shall re-commence on the date that Lessee reopens for business but no later than the sixtieth (60th) day after Lessor notifies Lessee in writing that the Premises are ready for fixturing. The Lessee shall be responsible, at its sole cost and expense, to repair or replace any and all of the Lessee's fixtures, equipment and leasehold improvements, which were damaged or destroyed by the same insured cause. The rent payable hereunder shall be equitably and proportionately abated, according to loss of use to Lessee, during the period of time intervening between the date of such fire and/or destruction and the date that the Premises are restored. However, if the damage is due to the fault or the negligence of the Lessee or its employees, there shall be no abatement of rent. If such destruction occurs, during the last two (2) years of the term and exceeds fifty percent (50%) of the insurable value of the Premises at the time of such destruction occurs, Lessor, at its option, may terminate this Lease as of the date of such destruction by giving Lessee written notice of its intention to do so within sixty (60) days after such date of destruction. If this Lease is so terminated, then the rent payable hereunder shall be abated as of the date of same destruction and Lessee shall remove all its property from the Premises within thirty (30) days after the receipt of written notice of termination. Unless Lessor gives such notice, this Lease shall remain in full force and effect and Lessor shall repair such damage as its expense, as expeditiously as possible under the circumstances. Notwithstanding the foregoing, in the event of damage to the Premises by fire or casualty which is not the result of Lessee's negligence, and which cannot be repaired within one hundred eighty (180) days of occurrence, Lessor or Lessee shall have the right to terminate this Lease by giving the other party thirty (30) days prior written notice.

23. FORCE MAJEURE: In the event that either party hereto shall be delayed or hindered in, or prevented from, the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature, not the fault of the party delayed in performing the work or doing acts required under the terms of this Lease, then performance of such acts shall be excused for the period of the delay; and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, that the provisions of this Lease shall not operate to release Lessee from this Lease nor to excuse Lessee, nor shall Lessee in any event be excused from prompt payment of rent and adjustments, and all other charges due Lessor by Lessee.

24. EMINENT DOMAIN: If all the Premises are condemned or taken by the power of eminent domain exercised by any governmental or quasi-governmental authority, this Lease shall terminate as of the date that the Lessee is required to vacate the Premises and all Rent shall be paid up to and until same date of termination. If only part of the Premises shall be taken and the size of the Premises are proportionately reduced, then the Lessee is entitled to an equal and proportionate reduction in Rent. Further, Lessor shall, as expeditiously as possible, repair the remaining portion of Premises to the extent necessary to render the same suitable for which the Premises were leased. Lessee hereby waives any right that it may have to any condemnation award or sum paid under threat of condemnation as a result of a complete or partial taking of the Premises and/or any portion of the common areas. If there is only a partial taking of the common areas, this Lease shall not terminate and this Lease shall remain in full force and in effect. After partial taking of the common areas, the Lessor, within a reasonable time thereafter, shall repair or reconstruct the remaining portion of the common areas to the extent necessary to make the same a complete architectural unit.

25. LESSEE'S DEFAULT: The occurrence of any one of the following events constitutes a default by the Lessee and a breach of this Lease and its covenants by the Lessee, if such default, breach or non performance is continued and not cured within ten (10) days after written notice from Lessor: (a) The vacating or abandonment of the Premises by Lessee, or the failure of the Lessee to be open for business and for the conduct of business as described in the Use Clause Article found in this Lease Agreement, (b) The failure by Lessee to make any payment of rent and adjustments on or before the due date thereof, (c) The failure by Lessee to perform any covenants herein or the breach by Lessee of any Lease covenants herein, other than those described in this section, and the further failure by Lessee to cure such covenant breach or non-performance, or to commence to cure and diligently pursue the cure of the covenant breach or non-performance which cannot be fully remedied within ten (10) days, (d) Petition by Lessee for bankruptcy, insolvency, or general assignment for the benefit of its creditors, or receiver appointment for Lessee for the substantial part of its assets and properties and such receiver is not removed with ten (10) days after its appointment, (e) If the Lessee shall default as described in this section, or in the performance of any covenant contained in this Lease, and if such default is repeated once within the next twelve months then, notwithstanding that such defaults shall have been cured within the period after notice as herein provided, any further similar default within such twelve month period shall be deemed a Lessee Default which cannot be cured, notwithstanding provisions for cure provided in this Lease. Upon such default, the Lessor may proceed, with five days notice but no opportunity for cure, to exercise its remedies upon default.

26. LESSOR'S REMEDIES: In the event of Lessee Default, including Lessee's abandonment or vacating the Premises, Lessor shall have the right, in addition to all other rights and remedies provided by the law, to terminate this Lease, and/or to re-enter and take possession of the Premises, peaceably or by force, and/or to change the locks thereto and to remove any property and merchandise therein, without liability to Lessee for damage arising therefrom and without obligation to Lessee to store any merchandise and property. Any costs of removal and storage of Lessee's fixtures, inventory, equipment or any other personal property shall be the expense of Lessee and shall be added to all sums owed by Lessee to Lessor. Further, Lessor is under no obligation to Lessee, after default or abandonment, to relet the Premises in the name of Lessee or for the benefit of the Lessor. Lessor may, at its option and without subsequent notice to Lessee, re-let the Premises for such term and on such covenants and purposes as Lessor, in its sole discretion, may determine are in the best interest of the Lessor. Lessor may collect and receive all rents derived therefrom and apply the same, after deduction of appropriate expenses, to the payment of the rent overdue and payable hereunder from the Lessee in default. The Lessee in default shall remain liable for any deficiency. Further, Lessor shall not be responsible for or liable for any failure to re-let the Premises or any part hereof, or for any failure to collect any rent connected therewith. The Lessor's recovery of possession of the Premises by any means shall not relieve the Lessee of its obligation to pay rent and adjustments through the term of the Lease, including any extensions in effect at the time of default under which Lessee then occupies the Premises.

Acceptance by Lessor of delinquent rent from Lessee after Lessee Default shall not cure such default or entitle Lessee to possession of the Premises. Lessee hereby expressly waives any and all rights of redemption, if any, granted by and under any present or future law, in the event that Lessee shall be evicted or dispossessed for any cause in default or in the event that the Lessor obtains possession of the Premises by virtue of the remedies outlined in this Lease, or otherwise. The receipt by Lessor of rent with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Lessor of any covenant hereof shall be deemed to have been agreed upon, unless explicitly reduced to written agreement and signed by Lessor and Lessee.

All remedies of Lessor shall be cumulative.

27. ATTORNEYS' FEES: Lessee hereby agrees to pay all costs incurred by the Lessor on account of the Lessee's default, including but not limited to collection costs, court costs and attorney fees in an amount equal to twenty-five percent (25%) of any money owed to Lessor by Lessee at the time and accruing after Lessor requests the assistance of an attorney. If Lessee's default is a non-monetary default, lessee shall pay the greater of Two Hundred Fifty Dollars ($250.00) or Lessor's actual attorney's fees.

28. TERMINATION AND SURRENDER: Upon the Termination Date of this Lease, Lessee shall surrender the Premises to Lessor in as good condition as they were found upon the Lessee taking possession of the Premises; except for ordinary wear and tear, reduction of the Premises by condemnation or damage by fire, destruction or other casualties or causes beyond Lessee's control. Lessee shall deliver to Lessor or its Agent all keys to the Premises and remove

all its personal property, merchandise and trade fixtures. After Lessee vacation or Lessee abandonment, Lessor may elect to retain or dispose of, in any manner, Lessee alterations and improvements or Lessee's personal property that Lessee does not remove from the Premises before or after the Termination Date. Title to any such Lessee alterations or Lessee's personal property, that Lessor elects to retain or dispose of after the Termination Date, shall vest to and in the Lessor. Lessee waives all claims against Lessor for any damage to Lessee resulting from Lessor's retention or disposition of any such alterations or personal property. Lessee is further liable to Lessor for Lessor's expenses and costs for removing and disposing of any Lessee alterations or Lessee personal property, which Lessor does not elect to acquire.

29. WAIVERS: The failure of Lessor to insist, in any one or more instances, to strict performance by Lessee as to any Lease covenants shall, not be construed as a waiver by Lessor or relinquishment, in the future, of such covenants, but the same shall continue and remain in full force and effect. The receipt by Lessor or its Agent of rent with knowledge of a covenant breach hereof shall not be deemed a waiver of the same covenant breach, and no waiver by Lessor of any provision hereof shall be deemed to have been agreed upon unless expressed in writing and signed by the parties hereto.

Lessee hereby waives the benefit of the homestead exemption as to this Lease.

30. EXCULPATION: The term "Lessor" as used in this Lease means only the owner, for the time being or at the time of Lease execution by Lessee, of the building in which the Premises are located or the owner of a Lease of both said building and the land thereunder. Lessor shall be liable for the performance of its obligations hereunder only to the extent of Lessor's assets as they pertain to the Premises. The Lessor and its officers, agents, employees, successors and assignees shall not be liable personally. Further, the liability of the Lessor shall not extend beyond the period of time of Lessor's ownership of the Premises.

31. SUCCESSORS AND ASSIGNS: All the terms, covenants and agreements of this Lease shall extend to and be binding upon the Lessor and be binding upon the Lessee and its respective heirs, administrators, executors, successors, assignees, sublessees, concessionaires, marital communities, if any, and their respective assigns; and/or upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

32. NOTICES: Any notice herein provided for to be given to Lessor shall be deemed to be given if and when posted in United States registered or certified mail, postage prepaid, addressed to:

LESSOR'S NOTICE ADDRESS:
Marcus D. Jones, City Manager
City Manager's Office
810 Union Street, Suite 1100
Norfolk, Virginia 23510

Copy to:
Jim Resolute
Department of Real Estate
232 E Main Street, Suite 250
Norfolk, Virginia 23510

LESSEE'S NOTICE ADDRESS:
Melanie Nusbaum
Corks and Caps, LLC
304 Bay Dunes Drive
Norfolk, Virginia 23503

Any notice herein provided for to be given to Lessee shall be deemed to be given if and when posted in United States registered or certified mail, postage prepaid.

Either party may, at any time, change its address for the purposes of notice hereof by sending a written notice to the other party stating the change and setting forth the new address.

33. SALES OR LEASEHOLD TAXES: Lessee will be responsible for the payment of any sales or leasehold tax, or other tax, levied by any governmental authority. Such tax payment shall be paid directly to the appropriate governmental authority by Lessee promptly after receipt of any such tax bill.

34. AMERICANS WITH DISABILITIES ACT: In the event that any federal, state, or local government authority (the "Applicable Authority") with jurisdiction determines that the exterior and/or interior of the Premises are not in compliance with the Americans with Disabilities Act of 1990 (the "ADA"), Lessor, at its sole cost, agrees to take such remedial action as is required by the Applicable Authority pursuant to the ADA to correct or remedy such noncompliance. Alternatively, if in Lessor's judgment the remedial or corrective measures proposed by the Applicable Authority do not have to be performed in order for Lessor to be in compliance with the ADA, Lessor may contest, at its sole cost, such matter in lieu of performing the remedial action. However, upon final judgment being entered against Lessor in a court of competent jurisdiction with regard to ADA requirements, Lessor agrees to take such remedial actions, at its sole cost, as ordered by such court.

35. BROKER: The Lessee is not represented by a Broker in this transaction.

36. ENTIRE AGREEMENT: This Lease contains the entire agreement of the parties hereto. Any and all oral or written agreements understandings, representations and warranties, promises and statements of the parties hereto or from their respective officers and directors or from their partners, Agents or brokers with respect to the subject matter of this Lease, and any matter not covered and mentioned in this Lease, shall be inferior and be merged in and by this Original Lease. No such prior oral or written agreement, understanding, representation or warranty, promise or statement shall be effective or binding for any reason or purpose, unless specifically set forth in this original Lease. No provision of this Lease may be amended or added to except by an agreement

in writing, signed by the parties hereto or their respective successors in interest. This Lease shall not be effective or binding on any party until fully executed by both parties hereto.

37. SEVERABILITY: In the event that any provision herein is unlawful, or otherwise unenforceable, it shall be severed and deemed null and void and shall not impair the validity of the remaining provisions of this Lease.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

CITY OF NORFOLK

By:_____(SEAL)
City Manager

Attest:

_____
City Clerk

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City of Norfolk, in the Commonwealth of Virginia, whose term of office expires on the _____ day of _____, 20___, do hereby certify that Marcus D. Jones, City Manager, or his duly authorized Assistant City Manager, and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing Lease Agreement, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this _____ day of _____, 2016.

_____
Notary Public
Registration No._____

Approved as to Contents:

_____
Director of General Services

Approved as to Form and Correctness:

_____
Deputy City Attorney

CORKS AND CAPS, LLC

By:_____
Name (Printed): _____
Title: _____

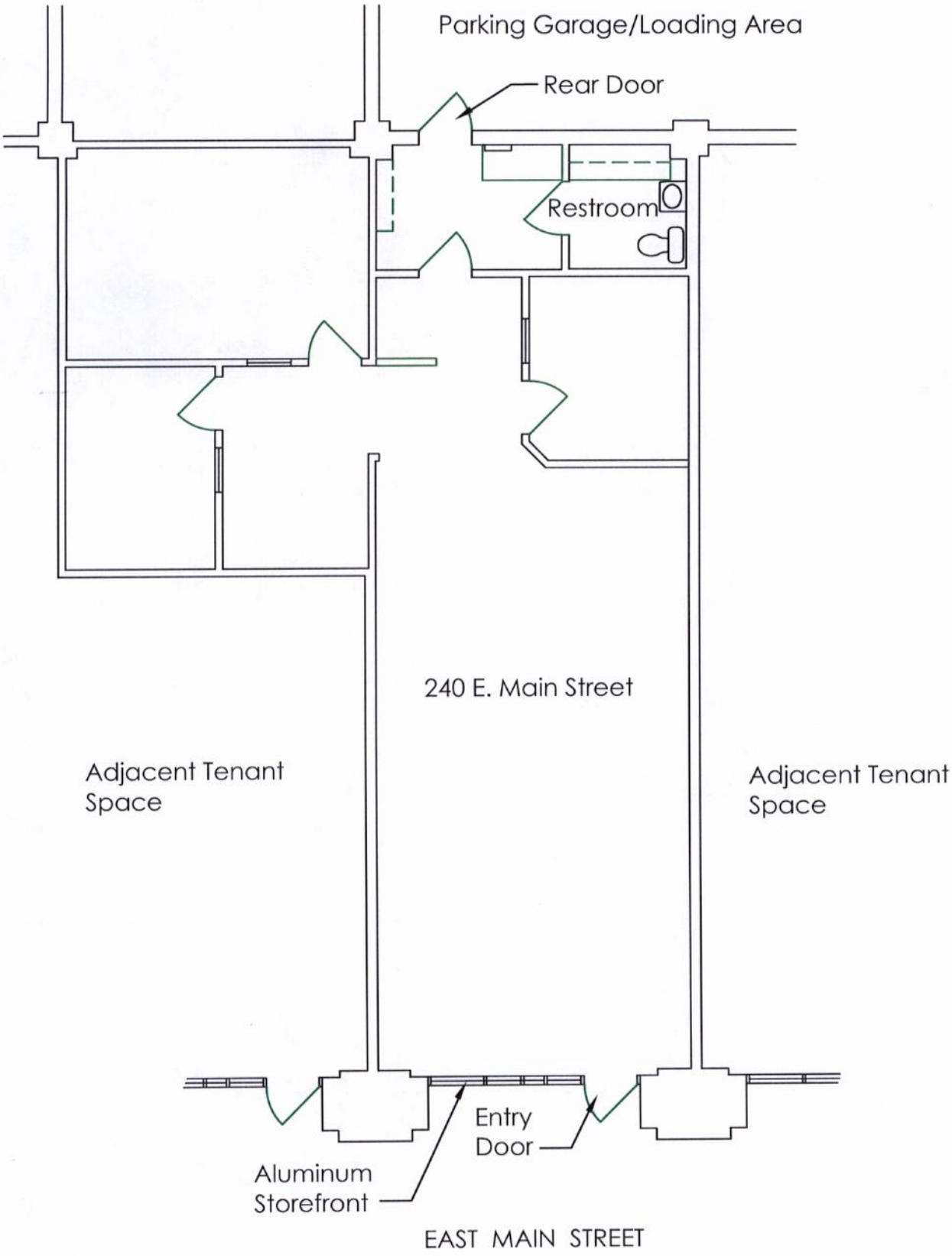
COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City of Norfolk, in the State of Virginia, do hereby certify that _____, _____ (Title) of Corks and Caps, LLC, whose name is signed to the foregoing Lease Agreement, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this _____ day of _____, 2016.

_____
Notary Public
Registration No._____

EXHIBIT A



FLOOR PLAN

North

0 4' 8' 16'

GRAPHIC SCALE

240 E. Main Street

City of NORFOLK

C: Dir., Department of General Services

To the Honorable Council
City of Norfolk, Virginia

April 26, 2016

From: David S. Freeman, AICP
Director of General Services

Subject Conveyance of a Buildable GEM Lot for Disposition Located at 1409 Wilson Road to DPT Construction, LLC

Ward/Superward: 4/7

Reviewed: _____
Peter H. Chapman, Deputy City Manager

Approved: _____
Marcus D. Jones, City Manager

Item Number: **PH-5**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** DPT Construction, LLC
1409 Wilson Rd.
Norfolk, VA

III. **Description:**
This agenda item is an ordinance to dispose of a vacant, non-standard size parcel of land owned by the City of Norfolk (the "city"). This parcel, located at 1409 Wilson Road (the "Property"), is a GEM lot and was acquired by the city under § 58.1-3970.1 of the *Code of Virginia*, 1950, as amended. This parcel is to be conveyed to DPT Construction, LLC ("DPT") under the GEM Side Lot for Development Disposition Program ("Program").

IV. **Analysis**
DPT seeks to purchase and develop the Property. The cost to DPT for purchase of the property from the City is $19,100 (the total assessed value). This sale will subject the property to real estate taxes, thereby creating on-going revenue for the city. No specific city use has been identified for the property and therefore, conveyance to DPT is consistent with the goals of the Program.

V. **Financial Impact**

Cost for Conveyance	Nineteen thousand one hundred dollars ($19,100)
Typical Costs of Closing	Each party to this transaction shall pay its own legal fees.
FY2016 Assessed Value of Parcel	Nineteen thousand one hundred dollars ($19,100)
Annual Tax Revenue of Parcel	$219.65 annually (will increase upon development of property – conveying this property will enable the City to place the property back on the tax rolls)

VI. Environmental

There are no known environmental issues associated with this property.

VII. Community Outreach/Notification

In accordance with the *Norfolk City Charter* and Virginia State law, a legal notice will be posted in *The Virginian-Pilot*. In addition, public notification for this agenda item was conducted through the city's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of General Services – Office of Real Estate and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Exhibit A to the Ordinance – Legal Description of the Property
- Exhibit B to the Ordinance – Proposed Conveyance Agreement

3/4/2016-wld

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT. General Services

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE AUTHORIZING THE CONVEYANCE TO DPT CONSTRUCTION, LLC OF A CERTAIN PARCEL OF PROPERTY LOCATED AT 1409 WILSON ROAD FOR THE TOTAL SUM OF $19,100.00 IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE CONVEYANCE AGREEMENT; AND AUTHORIZING THE RELEASE OF THE CITY'S RIGHT OF REVERTER UPON CERTAIN CONDITIONS.

- - -

WHEREAS, Section 58.1-3970.1 of the Code of Virginia, 1950, as amended, authorizes the appointment of a Special Commissioner for the purpose of conveying to localities, in lieu of public auction, certain real property with delinquent taxes and liens that meet certain criteria set forth therein; and

WHEREAS, the parcel of real property located at 1409 Wilson Road and more particularly described in Exhibit A, attached hereto and made a part hereof ("Property"), was conveyed to the City of Norfolk ("City") by a Special Commissioner's deed executed and delivered pursuant to a decree entered by the Circuit Court of the City of Norfolk in accordance with the provisions of Section 58.1-3970.1 of the Code of Virginia, 1950, as amended; and

WHEREAS, upon acquisition of the Property, the City recorded a Declaration of Protective and Restrictive Covenants ("Restrictive Covenants") in the Clerk's Office of the Circuit

Court of the City of Norfolk, as Instrument No. 060011351, which document provides, inter alia, that a violation of any protective or restrictive covenant contained therein shall, in the sole discretion of the City, cause the title to the Property to revert to the City; and

WHEREAS, Council has determined that the Property is not needed for any of the uses or purposes of the City and is a continuing financial burden on the City; and

WHEREAS, Section 2(5) of the Norfolk City Charter provides the City with broad authority for the disposition of its real property; and

WHEREAS, Council has determined that the public interest is best served by the conveyance of the Property to DPT Construction, LLC ("DPT") for the sum of $19,100.00 upon the terms and conditions set forth in the Conveyance Agreement attached hereto as Exhibit B; and

WHEREAS, in order for any potential purchasers of the Property to be able to obtain appropriate financing, it may be necessary that the City's right of reverter be released as to the Property; now therefore,

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the conveyance of the Property, located at 1409 Wilson Road and further described in Exhibit A, to DPT for the total sum of $19,100.00 upon the terms and conditions set forth in the Conveyance

Agreement attached as Exhibit B, is hereby authorized and approved.

Section 2:- That the City Manager, and the other proper officers of the City, are authorized to execute the Conveyance Agreement on behalf of the City of Norfolk and, upon receipt of the sum of $19,000.00, to be disbursed in accordance with the requirements of Section 58.1-3970.1 of the Code of Virginia, to deliver to DPT a Special Warranty Deed in form satisfactory to the City Attorney, and to do all other things necessary and proper to effect the conveyance of the said Property to DPT.

Section 3:- That the City Manager is authorized to release the City's right of reverter as to this Property upon receipt by the City of written certification by DPT that a purchaser of the Property has been identified and that such purchaser is unable to obtain financing for the purchase unless the City's right of reverter is released. In all other respects, the Declaration of Protective and Restrictive Covenants recorded in the Clerk's Office of the Circuit Court of the City of Norfolk as Instrument No. 060011351 shall remain in full force and effect.

Section 4:- That the City Manager is further authorized to correct, amend or revise the Conveyance Agreement as he may deem advisable to carry out the intent of the Council as expressed herein.

Section 5:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

EXHIBIT "A"
Tax Account Number 3528-3500

ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon, and the appurtenances thereunto belonging, lying, situate and being in the City of Norfolk, Virginia, currently numbered 1409 Wilson Road, known, numbered and designated as Lot "Z", Amended Resubdivision of Resubdivision of Lots 29, 30, 31, 32 & 33, Amended Plat of Long Point Land Co., which plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book 43, at page 133, to which reference is hereby made.

TOGETHER WITH all and singular, the buildings and improvements thereon, rights and privileges, hereditament and tenements thereunto belonging or in anywise appertaining, and any easements or rights of way for the use thereof.

SUBJECT, however, to all easements, right of way, agreements, conditions and restrictions affecting the said property.

EXHIBIT B TO ORDINANCE

CONVEYANCE AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2016, between the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia ("City"), and **DPT CONSTRUCTION, LLC**, a Virginia limited liability company ("DPT").

RECITALS:

A. City is the owner in fee simple absolute of a certain parcel of real property, together with all rights and appurtenances thereunto pertaining, located in the City of Norfolk, Virginia, known as 1409 Wilson Road, more particularly described in Exhibit A, attached to and made a part of this Agreement (the "Property"), the City having acquired the same pursuant to the provisions of Section 58.1-3970.1 of the Code of Virginia, 1950, as amended.

B. Upon acquisition of the Property, the City recorded a Declaration of Protective and Restrictive Covenants ("Restrictive Covenants") in the Clerk's Office of the Circuit Court of the City of Norfolk, as Instrument No. 060011351, a copy of which is attached hereto as Exhibit B, which provides, inter alia, that a violation of any protective or restrictive covenant contained therein shall, in the sole discretion of the City, cause the title to the Property to revert to the City.

C. DPT desires to purchase the property from City and City desires to sell the property to DPT in accordance with the terms and conditions of this Agreement.

D. These recitals are incorporated by this reference into this Agreement.

NOW, THEREFORE, in consideration of the purchase price and the mutual promises contained in this Agreement, the City and DPT agree as follows:

1. SALE. City agrees to sell and DPT agrees to purchase the Property, together with all easements, rights, and appurtenances thereto.

2. PURCHASE PRICE. The purchase price ("Purchase Price") for the Property is Nineteen Thousand Dollars and 0/100 ($19,100.00). The Purchase Price will be paid in the form of a certified check or by wire transfer of funds at closing.

3. CONVEYANCE.

a. The City agrees to convey the property to DPT by Special Warranty Deed, subject to applicable easements and restrictive covenants of record, and specifically the Restrictive Covenants attached hereto as Exhibit B.

b. No building permit shall be issued for the development of a single-family dwelling on the parcel until a zoning certificate has been granted by the Department of City Planning, which verifies that the proposed single-family dwelling to be built on the parcel is

consistent with the prevailing pattern in the neighborhood with respect to the footing, massing, scale, appearance, fenestration, roof lines and other exterior elements.

c. The deed shall contain a restrictive covenant limiting construction upon the property to single-family, owner occupied dwellings and structures appurtenant thereto for a period of five (5) years.

d. Possession of the Property will be given to DPT at Closing.

e. City agrees to pay the expenses of preparing the deed. DPT will pay all other fees and costs charged in connection with the transfer of the Property and the recordation of the deed.

f. City and DPT agree that the attorney or title insurance company ("Title Company") selected by the Purchaser shall act as the settlement agent ("Settlement Agent") at Purchaser's expense. The Settlement Agent shall prepare the settlement statement, update and record the deed, collect and disburse settlement funds in accordance with this Agreement and the settlement statement, and file any required state and federal tax forms or other certifications in accordance with Paragraph 14.

4. CLOSING. The Closing will be made at the offices of the Norfolk City Attorney, in Norfolk, Virginia 23510, or such other location as the parties may agree, within 120 days of the effective date of the ordinance authorizing the conveyance of the property by the City ("Effective Date"), or as soon thereafter as settlement documents can be prepared and any title issues can be resolved.

5. CONDITIONS. DPT's obligations are expressly conditioned upon the satisfaction of each of the following conditions in the sole determination of DPT, it being understood that the City is under no obligation whatsoever to expend any funds to satisfy any of these conditions. If any one of the following conditions cannot be met within 90 days after the Effective Date, DPT may unilaterally terminate this Agreement:

a. Receipt of a satisfactory title commitment.

b. Receipt of a Phase I Environmental Assessment and Report (Phase I Report) conducted and prepared by an environmental engineering and inspection company selected by DPT at DPT's expense, and such other testing and reports as may be reasonably required by DPT or recommended in the Phase I Report, any such additional testing and reports to be at DPT's expense.

c. Satisfaction by the City of all obligations under this Agreement.

6. SOLD "AS IS"; NO REPRESENTATIONS AND WARRANTIES BY CITY. DPT acknowledges that the City has made no representations or warranties whatsoever in regard to the Property, except for Special Warranty of Title. DPT agrees that they have inspected and are

thoroughly familiar with the Property and is acquiring the Property in its "as is" condition. DPT understands and agrees that the City has not made and makes no representations or warranties of any kind with respect to the condition of the Property or its fitness, suitability or acceptability for any particular use or purpose, and the City shall not be liable for any latent or patent defects therein.

7. NOTICES. All notices to the parties hereto will be delivered by hand, via certified mail return receipt requested, or via facsimile and all be deemed effective upon delivery if by hand and upon confirmation of receipt if by other means, to the following address until the address is changed by notice in writing to the other party:

DPT: DPT Construction, LLC
Attn: Doug Techanchuk
4004 Atlantic Avenue
Virginia Beach, Virginia 23451

City: Director, Department of General Services
Office of Real Estate
City of Norfolk
232 East Main Street, Suite 250
Norfolk, Virginia 23510

With a copy to: Bernard A. Pishko
City Attorney
810 Union Street, Suite 900
Norfolk, Virginia 23510

8. SURVIVAL. The provisions contained in this Agreement will be true as of the date of this Agreement and as of the date of Closing and will survive the Closing.

9. BROKERAGE OR AGENT'S FEES. Neither the City nor DPT are represented by a real estate broker, agent or finder in this transaction. No fees or commissions are or will be due from or payable by the City as a result of this transaction. The City shall not have any obligation whatsoever to pay any brokerage or agent's fees or commissions, nor shall the City have any obligation whatsoever to see that any such fees or commissions are paid.

10. DEFAULT AND REMEDIES.

a. If the conveyance contemplated by this Agreement is not consummated because of City's or DPT's default, the non-defaulting party may elect to:

(i) Terminate this Agreement; or

(ii) Seek and obtain specific performance of this Agreement.

11. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties and will supersede the terms and conditions of all prior written and oral agreements, if any, concerning the matters it covers. The parties acknowledge there are no oral agreements, understandings, representations, or warranties that supplement or explain the terms and conditions contained in this Agreement. This Agreement may not be modified except by an agreement in writing signed by the parties.

12. GOVERNING LAW. This Agreement is to be construed in accordance with the laws of the Commonwealth of Virginia.

13. SUCCESSOR/ASSIGNMENT. This Agreement will be binding upon and the obligations and benefits hereof will accrue to the parties hereto, their heirs, personal representatives, successors, and assigns.

14. IRS REPORTING REQUIREMENTS. For the purpose of complying with any information reporting requirements or other rules and regulations of the Internal Revenue Service ("IRS") that are or may become applicable as a result of or in connection with the transaction contemplated by this Conveyance Agreement including, but not limited to, any requirements set forth in proposed Income Tax Regulation Section 1.6045-4 and any final or successor version thereof (collectively the "IRS Reporting Requirements"), City and DPT hereby designate and appoint the DPT's attorney or Title Company to act as the "Reporting Person" (as that term is defined in the IRS Reporting Requirements) to be responsible for complying with any IRS Reporting Requirements. The attorney or Title Company hereby acknowledges and accepts such designation and appointment and agrees to fully comply with any IRS Reporting Requirements that are or may become applicable as a result of or in connection with the transaction contemplated by this Conveyance Agreement. Without limiting the responsibility and obligations of the attorney or Title Company as the Reporting Person, City and DPT hereby agree to comply with any provisions of the IRS Reporting Requirements that are not identified therein as the responsibility of the Reporting Person, including but not limited to, the requirement that City and DPT each retain an original counterpart of this Conveyance Agreement for at least four (4) years following the calendar year of the Closing.

WITNESS the following duly authorized signatures and seals:

(SIGNATURE PAGES TO FOLLOW)

CITY OF NORFOLK

By: _____
City Manager

ATTEST:

_____
City Clerk

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City of Norfolk, in the Commonwealth of Virginia, whose term of office expires on _____, do hereby certify that Marcus D. Jones, City Manager and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing Purchase and Sale Agreement, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this _____ day of _____, 2016.

_____
Notary Public

Registration No._____

Contents Approved:

_____
Director, Department of General Services

Approved as to Form and Correctness:

_____
Deputy City Attorney

DPT CONSTRUCTION, LLC

By:_____

Title:_____

STATE OF VIRGINIA
CITY/COUNTY OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City/County of Norfolk, in the State of Virginia, whose term of office expires on _____, do hereby certify that _____, as _____ (Title), on behalf of DPT Construction, LLC, whose name is signed to the foregoing Conveyance Agreement, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this ___day of _____, 2016.

_____
Notary Public

Registration No._____

ACKNOWLEDGEMENT BY TITLE COMPANY

The undersigned, _____, (referred to in this Purchase and Sale Agreement as the "Title Company"), hereby acknowledges that it received this Purchase and Sale Agreement executed by Seller and Purchasers and accepts the obligations of Title Company as set forth herein.

TITLE COMPANY

By: _____

Title: _____

Company: _____

EXHIBIT "A"
Tax Account Number 3528-3500

ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon, and the appurtenances thereunto belonging, lying, situate and being in the City of Norfolk, Virginia, currently numbered 1409 Wilson Road, known, numbered and designated as Lot "Z", Amended Resubdivision of Resubdivision of Lots 29, 30, 31, 32 & 33, Amended Plat of Long Point Land Co., which plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book 43, at page 133, to which reference is hereby made.

TOGETHER WITH all and singular, the buildings and improvements thereon, rights and privileges, hereditament and tenements thereunto belonging or in anywise appertaining, and any easements or rights of way for the use thereof.

SUBJECT, however, to all easements, right of way, agreements, conditions and restrictions affecting the said property.

INSTRUMENT #060011351
RECORDED IN THE CLERK'S OFFICE OF
NORFOLK ON
MARCH 9, 2006 AT 11:52AM
GEORGE E. SCHAEFER, CLERK

RECORDED BY: MXY

EXHIBIT B

Instrument Control Number

[ ]

2006 MAR -9 A 11:52 000159

Commonwealth of Virginia
Land Record Instruments
Cover Sheet - Form A

MAR09 060011351

[ILS VLR Cover Sheet Agent 1.0.66]

TAX EXEMPT | CORP

Date of Instrument: [3/8/2006]
Instrument Type: [DEC]

Number of Parcels [1]
Number of Pages [6]

City [x] County [ ] [City Of Norfolk]

(Box for Deed Stamp Only)

First and Second Grantors

	Last Name	First Name	Middle Name or Initial	Suffix
[x] [x]	[City of Norfolk	[	[	[
[ ] [ ]	[Trapani	[Philip	[R.	[Jr.

First and Second Grantees

	Last Name	First Name	Middle Name or Initial	Suffix
[x] [x]	[City of Norfolk	[	[	[
[ ] [ ]	[	[	[	[

Grantee Address
(Name) [City of Norfolk]
(Address 1) [Norfolk City Attorney's Office]
(Address 2) [810 Union Street, Room 900]
(City, State, Zip) [Norfolk] [VA] [23510]

Consideration [0.00] **Existing Debt** [0.00] **Assumption Balance** [0.00]

Prior Instr. Recorded at: City [ ] County [ ] **Percent. in this Juris.** [100]
Book [ ] **Page** [ ] **Instr. No** [060008026]
Parcel Identification No (PIN) [3528-3500]
Tax Map Num. (if different than PIN) [n/a]
Short Property Description [W S Wilson Road, Lot Z, Amended Plat of Long Point Land Co]
[ ]
Current Property Address (Address 1) [W S Wilson Road]
(Address 2) [ ]
(City, State, Zip) [Norfolk] [VA] [ ]

Instrument Prepared by [Charles Stanley Prentace]
Recording Paid for by [N/A]
Return Recording to (Name) [Charles Stanley Prentace, Deputy City Attorney]
(Address 1) [Norfolk City Attorney's Office]
(Address 2) [810 Union Street, 900 City Hall Building]
(City, State, Zip) [Norfolk] [VA] [23510]
Customer Case ID [N/A] [ ] [ ]

MSCV

Instrument Control Number

Commonwealth of Virginia
Land Record Instruments
Continuation Cover Sheet
Form B

[ILS VLR Cover Sheet Agent 1.0.66]

TAX EXEMPT	GRANTOR	GRANTEE	CORP
	X		

Date of Instrument: [3/8/2006]
Instrument Type: [DEC]

Number of Parcels [1]
Number of Pages [6]

City [X] County [ ] [City Of Norfolk]

(Box for Deed Stamp Only)

Grantors/Grantees/Parcel Continuation Form B

Last Name	First Name	Middle Name or Initial	Suffix
[MSRV DEVELOPMENT]	[Shareholders, Officers & Dir]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]
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Prior Instr. Recorded at: City [ ] County [ ] [ ] Percent. in this Juris. [ ]
Book [ ] Page [ ] Instr. No [ ]
Parcel Identification No (PIN) [ ]
Tax Map Num. (if different than PIN) [ ]
Short Property Description [ ]
[ ]
Current Property Address (Address 1) [ ]
(Address 2) [ ]
(City, State, Zip) [ ][ ][ ]

DECLARATION OF
PROTECTIVE AND RESTRICTIVE COVENANTS
RELATIVE TO PROPERTY LOCATED AT
LOT Z (TAX ACCOUNT #3528-3500)

THIS DECLARATION, made this 1st day of March, 2006, by the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia ("Declarant"), whose address is City Hall, 810 Union Street, Norfolk, Virginia, 23510.

WITNESSETH:

WHEREAS, Declarant is the owner of certain property described in Exhibit A, attached hereto and made a part hereof ("Property"); and

WHEREAS, Declarant, in order to provide for orderly development, improvement and maintenance of the Property, and the surrounding neighborhood, deems it suitable and appropriate to establish and publish certain standards and restrictions and to impose the same upon the Property;

NOW, THEREFORE, for and in consideration of the premises, the mutual benefits accruing to Declarant, to the surrounding neighborhood, and to subsequent purchasers of the Property, Declarant does hereby declare said Property to be subject to the following covenants, which covenants shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in and to the Property or any part thereof.

A. PERMITTED AND PROHIBITED USES.

1. Any construction on or development of the Property shall be in keeping with the City of Norfolk's General Plan, as well as the City's neighborhood plans, as such plans may be approved from time to time by the City Council.

2. No building or structure of any kind shall be constructed, altered or permitted on the Property without the prior written approval of the design of such building or structure by the Director of City Planning for the City of Norfolk ("Director"). A set of plans shall be submitted to the Director for approval as set forth herein.

3. All buildings and structures located on the Property shall be kept in good repair and the Property shall be kept in compliance with all City codes and ordinances.

4. If the Property is located on a street or in a district that is designated as an underground street or district under the provisions of the Norfolk City Code, 1979, as amended ("City Code"), then any building or structure located on the Property shall be served by underground utilities, and no above ground poles and wires shall be permitted, unless otherwise provided in the City Code.

B. REVIEW AND APPROVAL OF PLANS

1. All plans for any new buildings or structures to be located on the Property, including any additions to existing buildings or structures, must be presented to and approved by the Director in writing prior to the commencement of any construction.

2. The Director shall approve or disapprove plans submitted to him within forty-five (45) days after an application has been made to him. If the Director fails to act within the said 45 days, the application shall be deemed to have been approved. In the event the plans are disapproved by the Director, the party submitting the plans shall have 45 days from the date of such disapproval to submit revised plans, such revised plans to contain any revisions required by the Director.

3. The plans required to be submitted to the Director for approval shall include a full set of construction plans and site plans.

4. The construction of any building or structure on the Property must commence within ninety (90) days of the receipt of approval by the Director. Work thereon shall be prosecuted diligently and must be completed within a reasonable time not to exceed twelve (12) months from the date construction commences.

C. GRANTEE'S ACCEPTANCE

The Grantee of the Property subject to the coverage of this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of the Property, shall accept such deed or contract upon and subject to each and all of these protective and restrictive covenants and the agreements herein contained, and also the jurisdiction, rights, and powers of Declarant, and by such acceptance shall, for himself, his heirs, personal representatives, successors and assigns, consent, and agree to and with Declarant to keep, observe, comply with, and perform said protective and restrictive covenants.

D. EFFECTS OF PROTECTIVE AND RESTRICTIVE COVENANTS.

1. These protective and restrictive covenants shall run with the Property and shall be binding upon all parties and all persons claiming under them.

2. These protective and restrictive covenants may be changed, modified, or amended by a duly recorded instrument signed by the Declarant and the then current owner of the Property.

3. Each and every protective and restrictive covenant contained herein shall be considered to be an independent and separate covenant and agreement, and in the event that any one or more of said protective or restrictive covenants shall, for any reason, be held to be invalid or unenforceable, all remaining protective and restrictive covenants shall nevertheless remain in full force and effect.

4. The failure of any party or person to enforce a protective or restrictive covenant contained herein in any instance or against any person shall not constitute a waiver or abrogation of said protective or restrictive covenant.

E. REMEDIES.

The Declarant or any party to whose benefit these protective and restrictive covenants inure may proceed at law or in equity to prevent the occurrence, continuation, or violation of any of these protective and restrictive covenants, and the court in any such action may award reasonable expenses in prosecuting such action, including attorney's fees. In addition to any other remedy available at law or in equity, a violation of any protective or restrictive covenant contained herein shall, in the sole

discretion of the Declarant and upon the giving of written notice to the then current owner of the Property, cause the title to the Property to revert to the Declarant.

IN WITNESS WHEREOF, the Declarant has executed this Declaration the day and year first above written.

CITY OF NORFOLK

By: _____ [SEAL]
City Manager

Attest:

_____
City Clerk

Approved as to form and correctness:

_____ 2.23.06
Deputy City Attorney

STATE OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, Susan R. Leonard a Notary Public in and for the City of Norfolk, in the State of Virginia, whose term of office expires on the 31st day of August, 2008, do hereby certify that Regina V.K. Williams, City Manager and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing instrument dated March 1, 2006 have acknowledged the same before me in my City and State aforesaid.

Given under my hand this 1st day of March, 2006.

_____ [SEAL]
Notary Public

EXHIBIT "A"
Tax Account Number 3528-3500

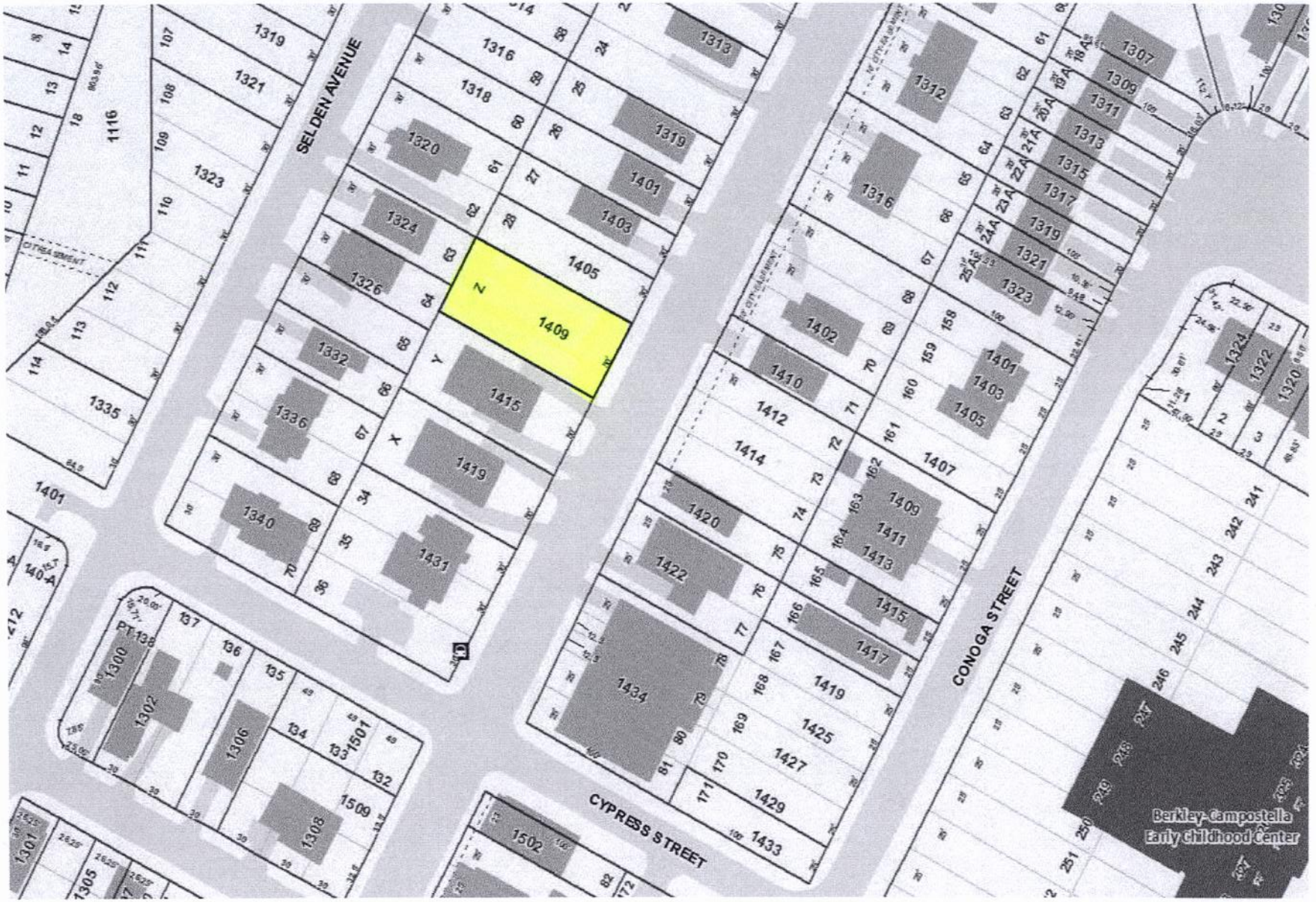
ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon, and the appurtenances thereunto belonging, lying, situate and being in the City of Norfolk, Virginia, currently numbered 1409 Wilson Road, known, numbered and designated as Lot "Z", Amended Resubdivision of Resubdivision of Lots 29, 30, 31, 32 & 33, Amended Plat of Long Point Land Co., which plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book 43, at page 133, to which reference is hereby made.

TOGETHER WITH all and singular, the buildings and improvements thereon, rights and privileges, hereditament and tenements thereunto belonging or in anywise appertaining, and any easements or rights of way for the use thereof.

SUBJECT, however, to all easements, right of way, agreements, conditions and restrictions affecting the said property.

INSTRUMENT #060011351
RECORDED IN THE CLERK'S OFFICE OF
NORFOLK ON
MARCH 9, 2006 AT 11:52AM
GEORGE E. SCHAEFER, CLERK

RECORDED BY: MXY


SELDEN AVENUE
CONOGA STREET
CYPRESS STREET
Berkley-Campostella
Early Childhood Center
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PT 138
CITY EASEMENT

City of NORFOLK

C: Dir., Department of General Services

To the Honorable Council
City of Norfolk, Virginia

April 26, 2016

From: David S. Freeman, AICP
Director of General Services

Subject: Conveyance of a Buildable GEM Lot for Disposition Located at 606 Maltby Avenue to Gethsemane Community Fellowship Baptist Church

Reviewed: _____
Peter H. Chapman, Deputy City Manager

Ward/Superward: 4/7

Approved: _____
Marcus D. Jones, City Manager

Item Number: **PH-6**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Gethsemane Community Baptist Church
606 Maltby Ave.
Norfolk, VA

III. **Description:**
This agenda item is an ordinance to dispose of a vacant, non-standard size parcel of land owned by the City of Norfolk (the "city"). This parcel, located at 606 Maltby Avenue (the "Property"), is a GEM lot and was acquired by the city under § 58.1-3970.1 of the *Code of Virginia*, 1950, as amended. This parcel is to be conveyed to Gethsemane Community Fellowship Baptist Church ("Gethsemane") under the GEM Side Lot for Development Disposition Program ("Program").

IV. **Analysis**
Gethsemane seeks to purchase and develop the Property. The cost to Gethsemane for purchase of the property from the City is $7,500 (the total assessed value). Conveyance of this property will allow Gethsemane to expand their current church facilities. This sale will subject the property to real estate taxes, thereby creating on-going revenue for the city. No specific city use has been identified for the property and therefore, conveyance to Gethsemane is consistent with the goals of the Program.

V. **Financial Impact**

Cost for Conveyance	Seven thousand five hundred dollars ($7,500)
Typical Costs of Closing	Each party to this transaction shall pay its own legal fees.
FY2016 Assessed Value of Parcel	Seven thousand five hundred dollars ($7,500)

Annual Tax Revenue of Parcel	$86.25 annually (will increase upon development of property – conveying this property will enable the City to place the property back on the tax rolls)

VI. Environmental

There are no known environmental issues associated with this property.

VII. Community Outreach/Notification

In accordance with the *Norfolk City Charter* and Virginia State law, a legal notice will be posted in *The Virginian-Pilot*. In addition, public notification for this agenda item was conducted through the city's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of General Services – Office of Real Estate and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Exhibit A to the Ordinance – Legal Description of the Property
- Exhibit B to the Ordinance – Proposed Conveyance Agreement

3/16/2016-wld

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT. General Services

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE AUTHORIZING THE CONVEYANCE TO THE TRUSTEES OF THE GETHSEMANE COMMUNITY FELLOWSHIP BAPTIST CHURCH, OF A CERTAIN PARCEL OF PROPERTY LOCATED AT 606 MALTBY AVENUE FOR THE TOTAL SUM OF $7,500.00 IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE CONVEYANCE AGREEMENT; AND AUTHORIZING THE RELEASE OF THE CITY'S RIGHT OF REVERTER UPON CERTAIN CONDITIONS.

- - -

WHEREAS, Section 58.1-3970.1 of the Code of Virginia, 1950, as amended, authorizes the appointment of a Special Commissioner for the purpose of conveying to localities, in lieu of public auction, certain real property with delinquent taxes and liens that meet certain criteria set forth therein; and

WHEREAS, the parcel of real property located at 606 Maltby Avenue and more particularly described in Exhibit A, attached hereto and made a part hereof ("Property"), was conveyed to the City of Norfolk ("City") by a Special Commissioner's deed recorded in the Clerk's Office of the Circuit Court of the City of Norfolk on January 30, 2006 as Instrument No. 060004751; and

WHEREAS, upon acquisition of the Property, the City recorded a Declaration of Protective and Restrictive Covenants ("Restrictive Covenants") in the Clerk's Office of the Circuit

Court of the City of Norfolk, as Instrument No. 060009742, which document provides, inter alia, that a violation of any protective or restrictive covenant contained therein shall, in the sole discretion of the City, cause the title to the Property to revert to the City; and

WHEREAS, Council has determined that the Property is not needed for any of the uses or purposes of the City and is a continuing financial burden on the City; and

WHEREAS, Section 2(5) of the Norfolk City Charter provides the City with broad authority for the disposition of its real property; and

WHEREAS, Council has determined that the public interest is best served by the conveyance of the Property to the trustees of the Gethsemane Community Fellowship Baptist Church ("GCFC") for the sum of $7,500.00 upon the terms and conditions set forth in the Conveyance Agreement attached hereto as Exhibit B; and

WHEREAS, in order for any potential purchasers of the Property to be able to obtain appropriate financing, it may be necessary that the City's right of reverter be released as to the Property; now therefore,

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the conveyance of the Property, located at 606 Maltby Avenue and further described in Exhibit A, to the trustees of the GCFC for the total sum of $7,500.00 upon the terms and conditions set forth in

the Conveyance Agreement attached as Exhibit B, is hereby authorized and approved.

Section 2:- That the City Manager, and the other proper officers of the City, are authorized to execute the Conveyance Agreement on behalf of the City of Norfolk and, upon receipt of the sum of $7,500.00, to be disbursed in accordance with the requirements of Section 58.1-3970.1 of the Code of Virginia, to deliver to GCFC a Special Warranty Deed in form satisfactory to the City Attorney, and to do all other things necessary and proper to effect the conveyance of the said Property to the trustees of the GCFC.

Section 3:- That the City Manager is authorized to release the City's right of reverter as to this Property upon receipt by the City of written certification by the trustees of the GCFC that a purchaser of the Property has been identified and that such purchaser is unable to obtain financing for the purchase unless the City's right of reverter is released. In all other respects, the Restrictive Covenants recorded in the Clerk's Office of the Circuit Court of the City of Norfolk as Instrument No. 060009742 shall remain in full force and effect.

Section 4:- That the City Manager is further authorized to correct, amend or revise the Conveyance Agreement as he may deem advisable to carry out the intent of the Council as expressed herein.

Section 5:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

EXHIBIT "A"
Tax Account Number 4760-4400

ALL that certain lot, piece or parcel of land, situated in the City of Norfolk, in the State of Virginia, known, numbered and designated as Lot Numbered Four (4) on the plat of lots surveyed and platted for A.D.J. Gammon and George W. Black, duly recorded in the Clerk's Office of the Circuit Court (formerly Corporation Court) of the City of Norfolk, Virginia, in Map Book 1, at page 72-B; said lot fronting twenty-five (25) feet on the eastern side of Maltby Avenue and extending back, between parallel lines, one hundred nineteen (119) feet and six and one-half (6 ½) inches, to Drain Street, as shown on said plat.

EXHIBIT B TO ORDINANCE

CONVEYANCE AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2016, between the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia ("City"), and **ALPHONSO ALBERT, DWIGHT TOWLER, AND MATTHEW LYONS, Trustees of GETHSEMANE COMMUNITY FELLOWSHIP BAPTIST CHURCH**, ("GCFC").

RECITALS:

A. City is the owner in fee simple absolute of a certain parcel of real property, together with all rights and appurtenances thereunto pertaining, located in the City of Norfolk, Virginia, known as 606 Maltby Avenue, more particularly described in Exhibit A, attached to and made a part of this Agreement (the "Property"), the City having acquired the same pursuant to the provisions of Section 58.1-3970.1 of the Code of Virginia, 1950, as amended.

B. Upon acquisition of the Property, the City recorded a Declaration of Protective and Restrictive Covenants ("Restrictive Covenants") in the Clerk's Office of the Circuit Court of the City of Norfolk, as Instrument No. 060009742, a copy of which is attached hereto as Exhibit B, which provides, inter alia, that a violation of any protective or restrictive covenant contained therein shall, in the sole discretion of the City, cause the title to the Property to revert to the City.

C. GCFC desires to purchase the property from City and City desires to sell the property to GCFC in accordance with the terms and conditions of this Agreement.

D. These recitals are incorporated by this reference into this Agreement.

NOW, THEREFORE, in consideration of the purchase price and the mutual promises contained in this Agreement, the City and GCFC agree as follows:

1. SALE. City agrees to sell and GCFC agrees to purchase the Property, together with all easements, rights, and appurtenances thereto.

2. PURCHASE PRICE. The purchase price ("Purchase Price") for the Property is Seven Thousand Five Hundred Dollars and 0/100 ($7,500.00). The Purchase Price will be paid in the form of a certified check or by wire transfer of funds at closing.

3. CONVEYANCE.

a. The City agrees to convey the property to GCFC by Special Warranty Deed, subject to applicable easements and restrictive covenants of record, and specifically the Restrictive Covenants attached hereto as Exhibit B.

b. GCFC understands and agrees that the property is non-confirming and non-buildable for a single family home, and may only be used for a religious institution or similar public/civic use.

c. Possession of the Property will be given to GCFC at Closing.

d. City agrees to pay the expenses of preparing the deed. GCFC will pay all other fees and costs charged in connection with the transfer of the Property and the recordation of the deed.

e. City and GCFC agree that the attorney or title insurance company ("Title Company") selected by GCFC shall act as the settlement agent ("Settlement Agent") at GCFC's expense. The Settlement Agent shall prepare the settlement statement, update and record the deed, collect and disburse settlement funds in accordance with this Agreement and the settlement statement, and file any required state and federal tax forms or other certifications in accordance with Paragraph 14.

4. CLOSING. The Closing will be made at the offices of the Norfolk City Attorney, in Norfolk, Virginia 23510, or such other location as the parties may agree, within 120 days of the effective date of the ordinance authorizing the conveyance of the property by the City ("Effective Date"), or as soon thereafter as settlement documents can be prepared and any title issues can be resolved.

5. CONDITIONS. GCFC's obligations are expressly conditioned upon the satisfaction of each of the following conditions in the sole determination of GCFC, it being understood that the City is under no obligation whatsoever to expend any funds to satisfy any of these conditions. If any one of the following conditions cannot be met within 90 days after the Effective Date, GCFC may unilaterally terminate this Agreement:

a. Receipt of a satisfactory title commitment.

b. Receipt of a Phase I Environmental Assessment and Report (Phase I Report) conducted and prepared by an environmental engineering and inspection company selected by GCFC at GCFC's expense, and such other testing and reports as may be reasonably required by DPT or recommended in the Phase I Report, any such additional testing and reports to be at GCFC's expense.

c. Satisfaction by the City of all obligations under this Agreement.

6. SOLD "AS IS"; NO REPRESENTATIONS AND WARRANTIES BY CITY. GCFC acknowledges that the City has made no representations or warranties whatsoever in regard to the Property, except for Special Warranty of Title. GCFC agrees that they have inspected and are thoroughly familiar with the Property and is acquiring the Property in its "as is" condition. GCFC understands and agrees that the City has not made and makes no representations or warranties of any kind with respect to the condition of the Property or its fitness, suitability or

acceptability for any particular use or purpose, and the City shall not be liable for any latent or patent defects therein.

7. NOTICES. All notices to the parties hereto will be delivered by hand, via certified mail return receipt requested, or via facsimile and all be deemed effective upon delivery if by hand and upon confirmation of receipt if by other means, to the following address until the address is changed by notice in writing to the other party:

GCFC: Gethsemane Community Fellowship Baptist Church
Attn: Alphonso Albert
1317 E. Brambleton Avenue
Norfolk, Virginia 23504

City: Director, Department of General Services
Office of Real Estate
City of Norfolk
232 East Main Street, Suite 250
Norfolk, Virginia 23510

With a copy to: Bernard A. Pishko
City Attorney
810 Union Street, Suite 900
Norfolk, Virginia 23510

8. SURVIVAL. The provisions contained in this Agreement will be true as of the date of this Agreement and as of the date of Closing and will survive the Closing.

9. BROKERAGE OR AGENT'S FEES. Neither the City nor GCFC are represented by a real estate broker, agent or finder in this transaction. No fees or commissions are or will be due from or payable by the City as a result of this transaction. The City shall not have any obligation whatsoever to pay any brokerage or agent's fees or commissions, nor shall the City have any obligation whatsoever to see that any such fees or commissions are paid.

10. DEFAULT AND REMEDIES.

a. If the conveyance contemplated by this Agreement is not consummated because of City's or GCFC's default, the non-defaulting party may elect to:

(i) Terminate this Agreement; or

(ii) Seek and obtain specific performance of this Agreement.

11. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties and will supersede the terms and conditions of all prior written and oral agreements, if any, concerning the matters it covers. The parties acknowledge there are no oral agreements,

understandings, representations, or warranties that supplement or explain the terms and conditions contained in this Agreement. This Agreement may not be modified except by an agreement in writing signed by the parties.

12. GOVERNING LAW. This Agreement is to be construed in accordance with the laws of the Commonwealth of Virginia.

13. SUCCESSOR/ASSIGNMENT. This Agreement will be binding upon and the obligations and benefits hereof will accrue to the parties hereto, their heirs, personal representatives, successors, and assigns.

14. IRS REPORTING REQUIREMENTS. For the purpose of complying with any information reporting requirements or other rules and regulations of the Internal Revenue Service ("IRS") that are or may become applicable as a result of or in connection with the transaction contemplated by this Conveyance Agreement including, but not limited to, any requirements set forth in proposed Income Tax Regulation Section 1.6045-4 and any final or successor version thereof (collectively the "IRS Reporting Requirements"), City and GCFC hereby designate and appoint the GCFC's attorney or Title Company to act as the "Reporting Person" (as that term is defined in the IRS Reporting Requirements) to be responsible for complying with any IRS Reporting Requirements. The attorney or Title Company hereby acknowledges and accepts such designation and appointment and agrees to fully comply with any IRS Reporting Requirements that are or may become applicable as a result of or in connection with the transaction contemplated by this Conveyance Agreement. Without limiting the responsibility and obligations of the attorney or Title Company as the Reporting Person, City and GCFC hereby agree to comply with any provisions of the IRS Reporting Requirements that are not identified therein as the responsibility of the Reporting Person, including but not limited to, the requirement that City and GCFC each retain an original counterpart of this Conveyance Agreement for at least four (4) years following the calendar year of the Closing.

WITNESS the following duly authorized signatures and seals:

(SIGNATURE PAGES TO FOLLOW)

CITY OF NORFOLK

By: _____
City Manager

ATTEST:

_____
City Clerk

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City of Norfolk, in the Commonwealth of Virginia, whose term of office expires on _____, do hereby certify that Marcus D. Jones, City Manager and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing Conveyance Agreement, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this _____ day of _____, 2016.

_____
Notary Public

Registration No._____

Contents Approved:

_____
Director, Department of General Services

Approved as to Form and Correctness:

_____
Deputy City Attorney

GETHSEMANE COMMUNITY FELLOWSHIP BAPTIST CHURCH

By:_____
Name (Printed):_____
Title:_____

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City/County of Norfolk, in the Commonwealth of Virginia, whose term of office expires on _____, do hereby certify that _____, as _____ (Title), on behalf of Gethsemane Community Fellowship Baptist Church, whose name is signed to the foregoing Conveyance Agreement, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this ___day of _____, 2016.

_____
Notary Public
Registration No._____

ACKNOWLEDGEMENT BY TITLE COMPANY

The undersigned, _____, (referred to in this Conveyance Agreement as the "Title Company"), hereby acknowledges that it received this Conveyance Agreement executed by Seller and Purchasers and accepts the obligations of Title Company as set forth herein.

TITLE COMPANY

By: _____

Title: _____

Company: _____

EXHIBIT "A"
Tax Account Number 4760-4400

ALL that certain lot, piece or parcel of land, situated in the City of Norfolk, in the State of Virginia, known, numbered and designated as Lot Numbered Four (4) on the plat of lots surveyed and platted for A.D.J. Gammon and George W. Black, duly recorded in the Clerk's Office of the Circuit Court (formerly Corporation Court) of the City of Norfolk, Virginia, in Map Book 1, at page 72-B; said lot fronting twenty-five (25) feet on the eastern side of Maltby Avenue and extending back, between parallel lines, one hundred nineteen (119) feet and six and one-half (6 ½) inches, to Drain Street, as shown on said plat.

EXHIBIT B

2006 FEB 29 P 2:39 000239

Instrument Control Number

Commonwealth of Virginia
Land Record Instruments
Cover Sheet - Form A

FEB 23 060009742

[ILS VLR Cover Sheet Agent 1.0.66]

TAX EXEMPT	CORP	
		Date of Instrument: [2/24/2006]
		Instrument Type: [DEC]
		Number of Parcels [1]
		Number of Pages [6]
		City [x] County [ ] [City Of Norfolk]

(Box for Deed Stamp Only)

First and Second Grantors

TAX EXEMPT	CORP	Last Name	First Name	Middle Name or Initial	Suffix
x	x	[City of Norfolk]	[ ]	[ ]	[ ]
		[Trapani]	[Philip]	[R.]	[Jr.]

First and Second Grantees

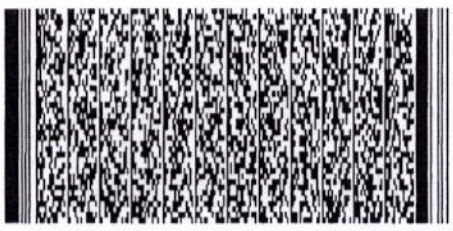
		Last Name	First Name	Middle Name or Initial	Suffix
x	x	[City of Norfolk]	[ ]	[ ]	[ ]
		[ ]	[ ]	[ ]	[ ]

Grantee Address
(Name) [City of Norfolk]
(Address 1) [Norfolk City Attorney's Office]
(Address 2) [810 Union Street, Room 900]
(City, State, Zip) [Norfolk] [VA] [23510]

Consideration [0.00] **Existing Debt** [0.00] **Assumption Balance** [0.00]

Prior Instr. Recorded at: City [ ] County [ ] [ ] **Percent. in this Juris.** [100]
Book [ ] **Page** [ ] **Instr. No** [060004751]
Parcel Identification No (PIN) [4760-4400]
Tax Map Num. (If different than PIN) [n/a]
Short Property Description [E S Maltby Ave, Lot 4]
[ ]
Current Property Address (Address 1) [E S Maltby Ave]
(Address 2) [ ]
(City, State, Zip) [Norfolk] [VA] [ ]

Instrument Prepared by [Charles Stanley Prentace]
Recording Paid for by [N/A]
Return Recording to (Name) [Charles Stanley Prentace, Deputy City Attorney]
(Address 1) [Norfolk City Attorney's Office]
(Address 2) [810 Union Street, 900 City Hall Building]
(City, State, Zip) [Norfolk] [VA] [23510]
Customer Case ID [N/A] [ ] [ ]



Cover Sheet Page # 1 of 2

Claude Porter

Instrument Control Number

[ ]

Commonwealth of Virginia

Land Record Instruments
Continuation Cover Sheet
Form B

[ILS VLR Cover Sheet Agent 1.0.66]

Date of Instrument: [2/24/2006]

Instrument Type: [DEC]

Number of Parcels [1]

Number of Pages [6]

City [X] County [ ] [City Of Norfolk]

(Box for Deed Stamp Only)

Grantors/Grantees/Parcel Continuation Form B

TAX EXEMPT	GRANTOR	GRANTEE	CORP	Last Name	First Name	Middle Name or Initial	Suffix
☐	☒	☐	☐	[Porter]	[Claude]	[ ]	[ ]
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Prior Instr. Recorded at: City ☐ County ☐ [ ] Percent. in this Juris. [ ]

Book [ ] Page [ ] Instr. No [ ]

Parcel Identification No (PIN) [ ]

Tax Map Num. (If different than PIN) [ ]

Short Property Description [ ]

[ ]

Current Property Address (Address 1) [ ]

(Address 2) [ ]

(City, State, Zip) [ ][ ][ ]

DECLARATION OF
PROTECTIVE AND RESTRICTIVE COVENANTS
RELATIVE TO PROPERTY LOCATED AT
LOT 4 (TAX ACCOUNT #4760-4400)

THIS DECLARATION, made this 16 day of Feb., 2006, by the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia ("Declarant"), whose address is City Hall, 810 Union Street, Norfolk, Virginia, 23510.

WITNESSETH:

WHEREAS, Declarant is the owner of certain property described in Exhibit A, attached hereto and made a part hereof ("Property"); and

WHEREAS, Declarant, in order to provide for orderly development, improvement and maintenance of the Property, and the surrounding neighborhood, deems it suitable and appropriate to establish and publish certain standards and restrictions and to impose the same upon the Property;

NOW, THEREFORE, for and in consideration of the premises, the mutual benefits accruing to Declarant, to the surrounding neighborhood, and to subsequent purchasers of the Property, Declarant does hereby declare said Property to be subject to the following covenants, which covenants shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in and to the Property or any part thereof.

A. PERMITTED AND PROHIBITED USES.

1. Any construction on or development of the Property shall be in keeping with the City of Norfolk's General Plan, as well as the City's neighborhood plans, as such plans may be approved from time to time by the City Council.

2. No building or structure of any kind shall be constructed, altered or permitted on the Property without the prior written approval of the design of such building or structure by the Director of City Planning for the City of Norfolk ("Director"). A set of plans shall be submitted to the Director for approval as set forth herein.

3. All buildings and structures located on the Property shall be kept in good repair and the Property shall be kept in compliance with all City codes and ordinances.

4. If the Property is located on a street or in a district that is designated as an underground street or district under the provisions of the Norfolk City Code, 1979, as amended ("City Code"), then any building or structure located on the Property shall be served by underground utilities, and no above ground poles and wires shall be permitted, unless otherwise provided in the City Code.

B. REVIEW AND APPROVAL OF PLANS

1. All plans for any new buildings or structures to be located on the Property, including any additions to existing buildings or structures, must be presented to and approved by the Director in writing prior to the commencement of any construction.

2. The Director shall approve or disapprove plans submitted to him within forty-five (45) days after an application has been made to him. If the Director fails to act within the said 45 days, the application shall be deemed to have been approved. In the event the plans are disapproved by the Director, the party submitting the plans shall have 45 days from the date of such disapproval to submit revised plans, such revised plans to contain any revisions required by the Director.

3. The plans required to be submitted to the Director for approval shall include a full set of construction plans and site plans.

4. The construction of any building or structure on the Property must commence within ninety (90) days of the receipt of approval by the Director. Work thereon shall be prosecuted diligently and must be completed within a reasonable time not to exceed twelve (12) months from the date construction commences.

C. GRANTEE'S ACCEPTANCE

The Grantee of the Property subject to the coverage of this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of the Property, shall accept such deed or contract upon and subject to each and all of these protective and restrictive covenants and the agreements herein contained, and also the jurisdiction, rights, and powers of Declarant, and by such acceptance shall, for himself, his heirs, personal representatives, successors and assigns, consent, and agree to and with Declarant to keep, observe, comply with, and perform said protective and restrictive covenants.

D. EFFECTS OF PROTECTIVE AND RESTRICTIVE COVENANTS.

1. These protective and restrictive covenants shall run with the Property and shall be binding upon all parties and all persons claiming under them.

2. These protective and restrictive covenants may be changed, modified, or amended by a duly recorded instrument signed by the Declarant and the then current owner of the Property.

3. Each and every protective and restrictive covenant contained herein shall be considered to be an independent and separate covenant and agreement, and in the event that any one or more of said protective or restrictive covenants shall, for any reason, be held to be invalid or unenforceable, all remaining protective and restrictive covenants shall nevertheless remain in full force and effect.

4. The failure of any party or person to enforce a protective or restrictive covenant contained herein in any instance or against any person shall not constitute a waiver or abrogation of said protective or restrictive covenant.

E. REMEDIES.

The Declarant or any party to whose benefit these protective and restrictive covenants inure may proceed at law or in equity to prevent the occurrence, continuation, or violation of any of these protective and restrictive covenants, and the court in any such action may award reasonable expenses in prosecuting such action, including attorney's fees. In addition to any other remedy available at law or in equity, a violation of any protective or restrictive covenant contained herein shall, in the sole

discretion of the Declarant and upon the giving of written notice to the then current owner of the Property, cause the title to the Property to revert to the Declarant.

IN WITNESS WHEREOF, the Declarant has executed this Declaration the day and year first above written.

CITY OF NORFOLK

By: Regina V.K. Williams [SEAL]
City Manager

Attest:

R. Breckenridge Daughtrey 02/17/06
City Clerk

Approved as to form and correctness:

Deputy City Attorney

STATE OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, Shelia W. Wilder, a Notary Public in and for the City of Norfolk, in the State of Virginia, whose term of office expires on the 31st day of August, 2006, do hereby certify that Regina V.K. Williams, City Manager and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing instrument dated Feb. 16, 2006 have acknowledged the same before me in my City and State aforesaid.

Given under my hand this 16th day of February, 2006.

Shelia W. Wilder [SEAL]
Notary Public

EXHIBIT "A"
Tax Account Number 4760-4400

ALL that certain lot, piece or parcel of land, situated in the City of Norfolk, in the State of Virginia, known, numbered and designated as Lot Numbered Four (4) on the plat of lots surveyed and platted for A.D.J. Gammon and George W. Black, duly recorded in the Clerk's Office of the Circuit Court (formerly Corporation Court) of the City of Norfolk, Virginia, in Map Book 1, at page 72-B; said lot fronting twenty-five (25) feet on the eastern side of Maltby Avenue and extending back, between parallel lines, one hundred nineteen (119) feet and six and one-half (6 ½) inches, to Drain Street, as shown on said plat.

INSTRUMENT #060007742
RECORDED IN THE CLERK'S OFFICE OF
NORFOLK ON
FEBRUARY 28, 2006 AT 02:39PM
GEORGE E. SCHAEFER, CLERK

RECORDED BY: MXY

E BRAMBLETON AVENUE
MALTBY AVENUE
CARR STREET
PARCELA
38,810 SQ. FT.
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604
1300
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C: Dir., Department of General Services

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

April 26, 2016

From: David S. Freeman, AICP
Director of General Services

Subject: Conveyance of a Buildable GEM Lot for Disposition Located at 985 Parish Road to Jay Investment Corporation

Reviewed: _____
Peter H. Chapman, Deputy City Manager

Ward/Superward: 4/7

Approved: _____
Marcus D. Jones, City Manager

Item Number: **PH-7**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Jay Investment Corporation
985 Parish Rd.
Norfolk, VA

III. **Description:**
This agenda item is an ordinance to dispose of a vacant, non-standard size parcel of land owned by the City of Norfolk (the "city"). This parcel, located at 985 Parish Road (the "Property"), is a GEM lot and was acquired by the city under § 58.1-3970.1 of the *Code of Virginia*, 1950, as amended. This parcel is to be conveyed to Jay Investment Corporation ("Jay") under the GEM Side Lot for Development Disposition Program ("Program").

IV. **Analysis:**
Jay seeks to purchase and develop the Property. The cost to Jay for purchase of the property from the City is $52,500.00 (the total assessed value). This sale will subject the property to real estate taxes, thereby creating on-going revenue for the city. No specific city use has been identified for the property and therefore, conveyance to Jay is consistent with the goals of the Program.

V. **Financial Impact**

Cost for Conveyance	Fifty-two thousand five hundred dollars ($52,500)
Typical Costs of Closing	Each party to this transaction shall pay its own legal fees.
FY2016 Assessed Value of Parcel	Fifty-two thousand five hundred dollars ($52,500)

810 Union Street #1101 ▪ Norfolk, Virginia 23510
Phone: 757-664-4242 ▪ Fax: 757-664-4239

Annual Tax Revenue of Parcel	$603.75 annually (will increase upon development of property – conveying this property will subject the property to real estate taxes)

VI. Environmental

There are no known environmental issues associated with this property.

VII. Community Outreach/Notification

In accordance with the Norfolk City Charter and Virginia State law, a legal notice will be posted in *The Virginian-Pilot*. In addition, public notification for this agenda item was conducted through the city's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of General Services – Office of Real Estate and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Exhibit A to the Ordinance – Legal Description of the Property
- Exhibit B to the Ordinance – Proposed Conveyance Agreement

3/9/2016-wld

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT. General Services

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE AUTHORIZING THE CONVEYANCE TO JAY INVESTMENT CORPORATION OF A CERTAIN PARCEL OF PROPERTY LOCATED AT 985 PARISH ROAD FOR THE TOTAL SUM OF $52,500.00 IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE CONVEYANCE AGREEMENT; AND AUTHORIZING THE RELEASE OF THE CITY'S RIGHT OF REVERTER UPON CERTAIN CONDITIONS.

- - -

WHEREAS, Section 58.1-3970.1 of the Code of Virginia, 1950, as amended, authorizes the appointment of a Special Commissioner for the purpose of conveying to localities, in lieu of public auction, certain real property with delinquent taxes and liens that meet certain criteria set forth therein; and

WHEREAS, the parcel of real property located at 985 Parish Road and more particularly described in Exhibit A, attached hereto and made a part hereof ("Property"), was conveyed to the City of Norfolk ("City") by a Special Commissioner's deed executed and delivered pursuant to a decree entered by the Circuit Court of the City of Norfolk in accordance with the provisions of Section 58.1-3970.1 of the Code of Virginia, 1950, as amended; and

WHEREAS, upon acquisition of the Property, the City recorded a Declaration of Protective and Restrictive Covenants ("Restrictive Covenants") in the Clerk's Office of the Circuit

Court of the City of Norfolk, as Instrument No. 060011356, which document provides, inter alia, that a violation of any protective or restrictive covenant contained therein shall, in the sole discretion of the City, cause the title to the Property to revert to the City; and

WHEREAS, Council has determined that the Property is not needed for any of the uses or purposes of the City and is a continuing financial burden on the City; and

WHEREAS, Section 2(5) of the Norfolk City Charter provides the City with broad authority for the disposition of its real property; and

WHEREAS, Council has determined that the public interest is best served by the conveyance of the Property to Jay Investment Corporation ("Jay") for the sum of $52,500.00 upon the terms and conditions set forth in the Conveyance Agreement attached hereto as Exhibit B; and

WHEREAS, in order for any potential purchasers of the Property to be able to obtain appropriate financing, it may be necessary that the City's right of reverter be released as to the Property; now therefore,

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the conveyance of the Property, located at 985 Parish Road and further described in Exhibit A, to Jay for the total sum of $52,500.00 upon the terms and conditions set forth in the Conveyance

Agreement attached as Exhibit B, is hereby authorized and approved.

Section 2:- That the City Manager, and the other proper officers of the City, are authorized to execute the Conveyance Agreement on behalf of the City of Norfolk and, upon receipt of the sum of $52,500.00, to be disbursed in accordance with the requirements of Section 58.1-3970.1 of the Code of Virginia, to deliver to Jay a Special Warranty Deed in form satisfactory to the City Attorney, and to do all other things necessary and proper to effect the conveyance of the said Property to Jay.

Section 3:- That the City Manager is authorized to release the City's right of reverter as to this Property upon receipt by the City of written certification by Jay that a purchaser of the Property has been identified and that such purchaser is unable to obtain financing for the purchase unless the City's right of reverter is released. In all other respects, the Declaration of Protective and Restrictive Covenants recorded in the Clerk's Office of the Circuit Court of the City of Norfolk as Instrument No. 060011356 shall remain in full force and effect.

Section 4:- That the City Manager is further authorized to correct, amend or revise the Conveyance Agreement as he may deem advisable to carry out the intent of the Council as expressed herein.

Section 5:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

EXHIBIT A TO ORDINANCE

Tax Account Number 4789-5157

ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in the City of Norfolk, Virginia and being known, numbered and designated as Lot AA as shown on the certain plat entitled Subdivision Plat of Lots 10,11,12 and Part of Lot "XX", Block 4, "Semi-Subdivision of the Haynes Tract", which plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book 49, page 58.

EXHIBIT B TO ORDINANCE

CONVEYANCE AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2016, between the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia ("City"), and **JAY INVESTMENT CORPORATION**, a Virginia corporation ("Jay").

RECITALS:

A. City is the owner in fee simple absolute of a certain parcel of real property, together with all rights and appurtenances thereunto pertaining, located in the City of Norfolk, Virginia, known as 985 Parish Road, more particularly described in Exhibit A, attached to and made a part of this Agreement (the "Property"), the City having acquired the same pursuant to the provisions of Section 58.1-3970.1 of the Code of Virginia, 1950, as amended.

B. Upon acquisition of the Property, the City recorded a Declaration of Protective and Restrictive Covenants ("Restrictive Covenants") in the Clerk's Office of the Circuit Court of the City of Norfolk, as Instrument No. 060011356, a copy of which is attached hereto as Exhibit B, which provides, inter alia, that a violation of any protective or restrictive covenant contained therein shall, in the sole discretion of the City, cause the title to the Property to revert to the City.

C. Jay desires to purchase the property from City and City desires to sell the property to Jay in accordance with the terms and conditions of this Agreement.

D. These recitals are incorporated by this reference into this Agreement.

E. The conveyance of the Property to Jay will enable Jay to construct attractive and affordable housing that will enhance the Property, as well as the neighborhood generally, and will return the Property to the real estate tax rolls.

NOW, THEREFORE, in consideration of the purchase price and the mutual promises contained in this Agreement, the City and Jay agree as follows:

1. SALE. City agrees to sell and Jay agrees to purchase the Property, together with all easements, rights, and appurtenances thereto.

2. PURCHASE PRICE. The purchase price ("Purchase Price") for the Property is Fifty Two Thousand Five Hundred Dollars and 0/100 ($52,500.00). The Purchase Price will be paid in the form of a certified check or by wire transfer of funds at closing.

3. CONVEYANCE.

a. The City agrees to convey the property to Jay by Special Warranty Deed, subject to applicable easements and restrictive covenants of record, and specifically the Restrictive Covenants attached hereto as Exhibit B.

b. No building permit shall be issued for the development of a single-family dwelling on the parcels until a zoning certificate has been granted by the Department of City Planning, which verifies that the proposed single-family dwelling to be built on the parcels is consistent with the prevailing pattern in the neighborhood with respect to the footing, massing, scale, appearance, fenestration, roof lines and other exterior elements.

c. The deed shall contain a restrictive covenant limiting construction upon the property to single-family, owner occupied dwellings and structures appurtenant thereto for a period of five (5) years.

d. Possession of the Property will be given to Jay at Closing.

e. City agrees to pay the expenses of preparing the deed. Jay will pay all other fees and costs charged in connection with the transfer of the Property and the recordation of the deed.

f. City and Jay agree that the attorney or title insurance company ("Title Company") selected by Jay shall act as the settlement agent ("Settlement Agent") at Jay's expense. The Settlement Agent shall prepare the settlement statement, update and record the deed, collect and disburse settlement funds in accordance with this Agreement and the settlement statement, and file any required state and federal tax forms or other certifications in accordance with Paragraph 15.

4. FEASIBILITY PERIOD. Purchaser shall have ninety (90) days from the date this Agreement is executed by all parties in which to complete its assessment of the Property, including title examination and environmental assessment.

5. CLOSING. The Closing will be made at the offices of the Norfolk City Attorney, in Norfolk, Virginia 23510, or such other location as the parties may agree, within 30 days after expiration of the Feasibility Period, or as soon thereafter as settlement documents can be prepared and any title issues can be resolved.

6. CONDITIONS. Jay's obligations are expressly conditioned upon the satisfaction of each of the following conditions in the sole determination of Jay, it being understood that the City is under no obligation whatsoever to expend any funds to satisfy any of these conditions. If any one of the following conditions cannot be met during the Feasibility Period, Jay may unilaterally terminate this Agreement:

a. Receipt of a satisfactory title commitment.

b. Receipt of a Phase I Environmental Assessment and Report (Phase I Report) conducted and prepared by an environmental engineering and inspection company selected by Jay at Jay's expense, and such other testing and reports as may be reasonably required by Jay or recommended in the Phase I Report, any such additional testing and reports to be at Jay's expense.

c. Satisfaction by the City of all obligations under this Agreement.

7. SOLD "AS IS"; NO REPRESENTATIONS AND WARRANTIES BY CITY. Jay acknowledges that the City has made no representations or warranties whatsoever in regard to the Property, except for Special Warranty of Title. Jay agrees that they have inspected and are thoroughly familiar with the Property and is acquiring the Property in its "as is" condition. Jay understands and agrees that the City has not made and makes no representations or warranties of any kind with respect to the condition of the Property or its fitness, suitability or acceptability for any particular use or purpose, and the City shall not be liable for any latent or patent defects therein.

8. NOTICES. All notices to the parties hereto will be delivered by hand, via certified mail return receipt requested, or via facsimile and all be deemed effective upon delivery if by hand and upon confirmation of receipt if by other means, to the following address until the address is changed by notice in writing to the other party:

Jay: Jay Investment Corporation
Attn: Lloyd Vaughn
1504 Pine Grove Lane
Chesapeake, Virginia 23321

City: Director, Department of General Services
Office of Real Estate
City of Norfolk
232 East Main Street, Suite 250
Norfolk, Virginia 23510

With a copy to: Bernard A. Pishko
City Attorney
810 Union Street, Suite 900
Norfolk, Virginia 23510

9. SURVIVAL. The provisions contained in this Agreement will be true as of the date of this Agreement and as of the date of Closing and will survive the Closing.

10. BROKERAGE OR AGENT'S FEES. Neither the City nor Jay are represented by a real estate broker, agent or finder in this transaction. No fees or commissions are or will be due from or payable by the City as a result of this transaction. The City shall not have any obligation whatsoever to pay any brokerage or agent's fees or commissions, nor shall the City have any obligation whatsoever to see that any such fees or commissions are paid.

11. DEFAULT AND REMEDIES.

a. If the conveyance contemplated by this Agreement is not consummated because of City's or Jay's default, the non-defaulting party may elect to:

(i) Terminate this Agreement; or

(ii) Seek and obtain specific performance of this Agreement.

12. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties and will supersede the terms and conditions of all prior written and oral agreements, if any, concerning the matters it covers. The parties acknowledge there are no oral agreements, understandings, representations, or warranties that supplement or explain the terms and conditions contained in this Agreement. This Agreement may not be modified except by an agreement in writing signed by the parties.

13. GOVERNING LAW. This Agreement is to be construed in accordance with the laws of the Commonwealth of Virginia.

14. SUCCESSOR/ASSIGNMENT. This Agreement will be binding upon and the obligations and benefits hereof will accrue to the parties hereto, their heirs, personal representatives, successors, and assigns.

15. IRS REPORTING REQUIREMENTS. For the purpose of complying with any information reporting requirements or other rules and regulations of the Internal Revenue Service ("IRS") that are or may become applicable as a result of or in connection with the transaction contemplated by this Conveyance Agreement including, but not limited to, any requirements set forth in proposed Income Tax Regulation Section 1.6045-4 and any final or successor version thereof (collectively the "IRS Reporting Requirements"), City and Jay hereby designate and appoint the Jay's attorney or Title Company to act as the "Reporting Person" (as that term is defined in the IRS Reporting Requirements) to be responsible for complying with any IRS Reporting Requirements. The attorney or Title Company hereby acknowledges and accepts such designation and appointment and agrees to fully comply with any IRS Reporting Requirements that are or may become applicable as a result of or in connection with the transaction contemplated by this Conveyance Agreement. Without limiting the responsibility and obligations of the attorney or Title Company as the Reporting Person, City and Jay hereby agree to comply with any provisions of the IRS Reporting Requirements that are not identified therein as the responsibility of the Reporting Person, including but not limited to, the requirement that City and Jay each retain an original counterpart of this Conveyance Agreement for at least four (4) years following the calendar year of the Closing.

(SIGNATURE PAGES FOLLOW)

WITNESS the following duly authorized signatures and seals:

CITY OF NORFOLK

By: _____
City Manager

ATTEST:

_____
City Clerk

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City of Norfolk, in the Commonwealth of Virginia, whose term of office expires on _____, do hereby certify that Marcus D. Jones, City Manager and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing Conveyance Agreement, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this _____ day of _____, 2016.

_____
Notary Public

Registration No._____

Contents Approved:

_____
Director, Department of General Services

Approved as to Form and Correctness:

_____
Deputy City Attorney

JAY INVESTMENT CORPORATION

By:_____

Title:_____

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City/County of Norfolk, in the Commonwealth of Virginia, whose term of office expires on _____, do hereby certify that _____, as _____ (Title), on behalf of Jay Investment Corporation whose name is signed to the foregoing Conveyance Agreement, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this ___day of _____, 2016.

_____
Notary Public

Registration No._____

EXHIBIT "A"
Tax Account Number 4789-5157

ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in the City of Norfolk, Virginia and being known, numbered and designated as Lot AA as shown on the certain plat entitled Subdivision Plat of Lots 10,11,12 and Part of Lot "XX", Block 4, "Semi-Subdivision of the Haynes Tract", which plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book 49, page 58.

EXHIBIT B

Instrument Control Number

[ ]

2006 MAR -9 A 11:52 000174

Commonwealth of Virginia
Land Record Instruments
Cover Sheet - Form A

MAR09 060011356

[ILS VLR Cover Sheet Agent 1.0.66]

TAX EXEMPT	CORP

Date of Instrument: [3/8/2006]
Instrument Type: [DEC]

Number of Parcels [1]
Number of Pages [6]

City [x] County [ ] [City Of Norfolk]

(Box for Deed Stamp Only)

First and Second Grantors

		Last Name	First Name	Middle Name or Initial	Suffix
[x]	[x]	[City of Norfolk]	[ ]	[ ]	[ ]
[ ]	[ ]	[Trapani]	[Philip]	[R.]	[Jr.]

First and Second Grantees

		Last Name	First Name	Middle Name or Initial	Suffix
[x]	[x]	[City of Norfolk]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

Grantee Address (Name) [City of Norfolk]
(Address 1) [Norfolk City Attorney's Office]
(Address 2) [810 Union Street, Room 900]
(City, State, Zip) [Norfolk] [VA] [23510]

Consideration [0.00] Existing Debt [0.00] Assumption Balance [0.00]

Prior Instr. Recorded at: City [ ] County [ ] [ ] Percent. In this Juris. [100]
Book [ ] Page [ ] Instr. No [060008023]
Parcel Identification No (PIN) [4789-5157]
Tax Map Num. (if different than PIN) [n/a]
Short Property Description [Lot AA, Block 4, Semi-Subdivision of the Haynes Tract]
[ ]
Current Property Address (Address 1) [W S Parish Road]
(Address 2) [ ]
(City, State, Zip) [Norfolk] [VA] [ ]

Instrument Prepared by [Charles Stanley Prentace]
Recording Paid for by [N/A]
Return Recording to (Name) [Charles Stanley Prentace, Deputy City Attorney]
(Address 1) [Norfolk City Attorney's Office]
(Address 2) [810 Union Street, 900 City Hall Building]
(City, State, Zip) [Norfolk] [VA] [23510]
Customer Case ID [N/A] [ ] [ ]

Cover Sheet Page # 1 of 2

annie brothers
C. milon

Instrument Control Number

[ ]

Commonwealth of Virginia

Land Record Instruments Continuation Cover Sheet Form B

[ILS VLR Cover Sheet Agent 1.0.66]

Date of Instrument: [3/8/2006]

Instrument Type: [DEC]

Number of Parcels [1]

Number of Pages [6]

City [X] County [ ] [City Of Norfolk]

(Box for Deed Stamp Only)

Grantors/Grantees/Parcel Continuation Form B

TAX EXEMPT	GRANTOR	GRANTEE	CORP	Last Name	First Name	Middle Name or Initial	Suffix
[ ]	[X]	[ ]	[ ]	[Milon	] [Clairnette	] [	] [ ]
[ ]	[X]	[ ]	[ ]	[Milon	] [Olivia	] [	] [ ]
[ ]	[X]	[ ]	[ ]	[Milon	] [Contina	] [	] [ ]
[ ]	[X]	[ ]	[ ]	[Milon	] [Preston	] [	] [ ]
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[ ]	[ ]	[ ]	[ ]	[	] [	] [	] [ ]

Prior Instr. Recorded at: City [ ] County [ ] [ ] Percent. in this Juris. [ ]

Book [ ] Page [ ] Instr. No [ ]

Parcel Identification No (PIN) [ ]

Tax Map Num. (if different than PIN) [ ]

Short Property Description [ ]

[ ]

Current Property Address (Address 1) [ ]

(Address 2) [ ]

(City, State, Zip) [ ] [ ] [ ]

DECLARATION OF
PROTECTIVE AND RESTRICTIVE COVENANTS
RELATIVE TO PROPERTY LOCATED AT
LOT AA (TAX ACCOUNT #4789-5157)

THIS DECLARATION, made this 1st day of March, 2006, by the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia ("Declarant"), whose address is City Hall, 810 Union Street, Norfolk, Virginia, 23510.

WITNESSETH:

WHEREAS, Declarant is the owner of certain property described in Exhibit A, attached hereto and made a part hereof ("Property"); and

WHEREAS, Declarant, in order to provide for orderly development, improvement and maintenance of the Property, and the surrounding neighborhood, deems it suitable and appropriate to establish and publish certain standards and restrictions and to impose the same upon the Property;

NOW, THEREFORE, for and in consideration of the premises, the mutual benefits accruing to Declarant, to the surrounding neighborhood, and to subsequent purchasers of the Property, Declarant does hereby declare said Property to be subject to the following covenants, which covenants shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in and to the Property or any part thereof.

A. PERMITTED AND PROHIBITED USES.

1. Any construction on or development of the Property shall be in keeping with the City of Norfolk's General Plan, as well as the City's neighborhood plans, as such plans may be approved from time to time by the City Council.

2. No building or structure of any kind shall be constructed, altered or permitted on the Property without the prior written approval of the design of such building or structure by the Director of City Planning for the City of Norfolk ("Director"). A set of plans shall be submitted to the Director for approval as set forth herein.

3. All buildings and structures located on the Property shall be kept in good repair and the Property shall be kept in compliance with all City codes and ordinances.

4. If the Property is located on a street or in a district that is designated as an underground street or district under the provisions of the Norfolk City Code, 1979, as amended ("City Code"), then any building or structure located on the Property shall be served by underground utilities, and no above ground poles and wires shall be permitted, unless otherwise provided in the City Code.

B. REVIEW AND APPROVAL OF PLANS

1. All plans for any new buildings or structures to be located on the Property, including any additions to existing buildings or structures, must be presented to and approved by the Director in writing prior to the commencement of any construction.

2. The Director shall approve or disapprove plans submitted to him within forty-five (45) days after an application has been made to him. If the Director fails to act within the said 45 days, the application shall be deemed to have been approved. In the event the plans are disapproved by the Director, the party submitting the plans shall have 45 days from the date of such disapproval to submit revised plans, such revised plans to contain any revisions required by the Director.

3. The plans required to be submitted to the Director for approval shall include a full set of construction plans and site plans.

4. The construction of any building or structure on the Property must commence within ninety (90) days of the receipt of approval by the Director. Work thereon shall be prosecuted diligently and must be completed within a reasonable time not to exceed twelve (12) months from the date construction commences.

C. GRANTEE'S ACCEPTANCE

The Grantee of the Property subject to the coverage of this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of the Property, shall accept such deed or contract upon and subject to each and all of these protective and restrictive covenants and the agreements herein contained, and also the jurisdiction, rights, and powers of Declarant, and by such acceptance shall, for himself, his heirs, personal representatives, successors and assigns, consent, and agree to and with Declarant to keep, observe, comply with, and perform said protective and restrictive covenants.

D. EFFECTS OF PROTECTIVE AND RESTRICTIVE COVENANTS.

1. These protective and restrictive covenants shall run with the Property and shall be binding upon all parties and all persons claiming under them.

2. These protective and restrictive covenants may be changed, modified, or amended by a duly recorded instrument signed by the Declarant and the then current owner of the Property.

3. Each and every protective and restrictive covenant contained herein shall be considered to be an independent and separate covenant and agreement, and in the event that any one or more of said protective or restrictive covenants shall, for any reason, be held to be invalid or unenforceable, all remaining protective and restrictive covenants shall nevertheless remain in full force and effect.

4. The failure of any party or person to enforce a protective or restrictive covenant contained herein in any instance or against any person shall not constitute a waiver or abrogation of said protective or restrictive covenant.

E. REMEDIES.

The Declarant or any party to whose benefit these protective and restrictive covenants inure may proceed at law or in equity to prevent the occurrence, continuation, or violation of any of these protective and restrictive covenants, and the court in any such action may award reasonable expenses in prosecuting such action, including attorney's fees. In addition to any other remedy available at law or in equity, a violation of any protective or restrictive covenant contained herein shall, in the sole

discretion of the Declarant and upon the giving of written notice to the then current owner of the Property, cause the title to the Property to revert to the Declarant.

IN WITNESS WHEREOF, the Declarant has executed this Declaration the day and year first above written.

CITY OF NORFOLK

By: _____ [SEAL]
City Manager

Attest:

_____
City Clerk

Approved as to form and correctness:

_____ 2.23.06
Deputy City Attorney

STATE OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, Susan R. Leonard a Notary Public in and for the City of Norfolk, in the State of Virginia, whose term of office expires on the 31st day of August, 2008, do hereby certify that Regina V.K. Williams, City Manager and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing instrument dated March 1, 2006 have acknowledged the same before me in my City and State aforesaid.

Given under my hand this 1st day of March, 2006.

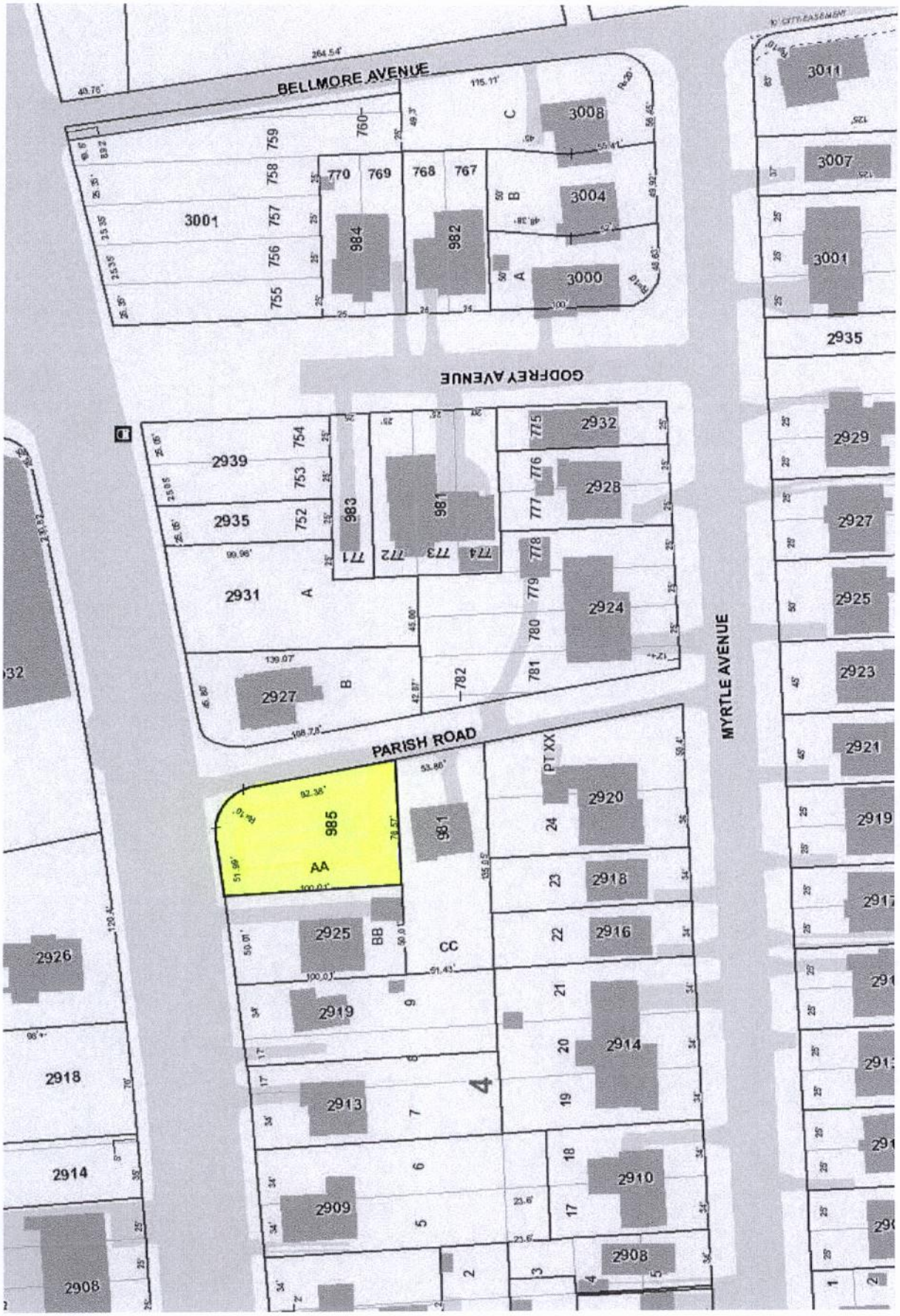
_____ [SEAL]
Notary Public

EXHIBIT "A"
Tax Account Number 4789-5157

ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in the City of Norfolk, Virginia and being known, numbered and designated as Lot AA as shown on the certain plat entitled Subdivision Plat of Lots 10,11,12 and Part of Lot "XX", Block 4, "Semi-Subdivision of the Haynes Tract", which plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book 49, page 58.

INSTRUMENT #060011356
RECORDED IN THE CLERK'S OFFICE OF
NORFOLK ON
MARCH 9, 2006 AT 11:52AM
GEORGE E. SCHAEFER, CLERK

RECORDED BY: MXY


BELLMORE AVENUE
GODFREY AVENUE
PARISH ROAD
MYRTLE AVENUE
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3008
3004
3000
3011
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City of NORFOLK

C: Dir., Department of General Services

To the Honorable Council
City of Norfolk, Virginia

April 26, 2016

From: David S. Freeman, AICP
Director of General Services

Subject: Renewal of Lease Agreement between the City of Norfolk and Rover Marine, Inc.

Reviewed: _____
Sabrina Joy-Hogg, Deputy City Manager

Ward/Superward: 2/6

Approved: _____
Marcus D. Jones, City Manager

Item Number: **PH-8**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Rover Marine, Inc.
224 E. Main St.
Norfolk, VA

III. **Description:**
This agenda item is an ordinance to approve a lease agreement between the City of Norfolk (the "city") and Rover Marine, Inc. ("Rover") for lease of city-owned property.

IV. **Analysis**
This lease agreement will permit Rover to continue to lease and use the city-owned space located at 224 E. Main Street as a business office for their sailing boat and cruise operations. Rover provides local sailing and cruise tours along the Elizabeth River and Hampton Roads Harbors. The term of the proposed lease is three (3) years, commencing on May 1, 2016, or upon the effective date of any authorizing ordinance, and terminating on April 30, 2019. Rover would also have the right to renew this lease for two (2) additional one (1) year terms.

V. **Financial Impact**
The rent will be subject to a 3 percent annual escalation.

Term	Monthly Rent	Annual Rent
05/01/2016 – 04/30/2017	$1,163.21	$13,958.52
05/01/2017 – 04/30/2018	$1,198.11	$14,377.32
05/01/2018 – 04/30/2019	$1,234.05	$14,808.60
05/01/2019 – 04/30/2020	$1,271.07	$15,252.84
05/01/2020 – 04/30/2021	$1,309.13	$15,709.56

Liability insurance for 224 E. Main Street (Rover Marine, Inc.)	The City has been named as an additional insured in the amount of $1,000,000 per occurrence; therefore, there should be no financial risk to the City.

VI. Environmental

There are no known environmental issues associated with this property.

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the city's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of General Services – Office of Real Estate and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Exhibit A to Ordinance – Proposed Lease Agreement
- Floor plan

3/22/2016 -wld

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____ for DSF
DEPT. General Services

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING A LEASE AGREEMENT WITH ROVER MARINE, INC. FOR THE LEASE OF CITY OWNED PROPERTY LOCATED AT 224 E. MAIN STREET.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Lease Agreement, a copy of which is attached hereto as Exhibit A, between the City of Norfolk ("City") and Rover Marine, Inc. ("Rover"), whereby the City leases certain property located at 224 E. Main Street to Rover for use as a business office, is hereby approved.

Section 2:- That the City Manager and other proper officers of the City are authorized to execute the Lease on behalf of the City and to do all things necessary and proper to carry out its terms.

Section 3:- That the City Manager is further authorized to correct, amend or revise the Lease Agreement as he may deem advisable in order to carry out the intent of the Council.

Section 4:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

EXHIBIT A TO ORDINANCE

LEASE AGREEMENT

THIS LEASE AGREEMENT, ("Lease"), made this _____ day of _____, 2016, by and between the **CITY OF NORFOLK,** a municipal corporation of the Commonwealth of Virginia, ("Landlord"), and **ROVER MARINE INC.**, ("Tenant").

WITNESSETH:

Landlord, for and in consideration of the rents, covenants and agreements hereinafter mentioned, reserved and contained, to be paid, kept and performed by Tenant, has demised and leased and does hereby demise and lease unto Tenant, and Tenant does hereby lease from Landlord, the property owned by Landlord known as 224 East Main Street in Norfolk, Virginia ("Demised Premises"). The Demised Premises consist of 954 square feet, and are shown in Exhibit A, attached to and made a part hereof.

1. **TERM OF LEASE**. Landlord leases unto Tenant and Tenant hires from Landlord the Demised Premises for the term of three (3) years ("Term") to commence May 1, 2016, or upon the effective date of any authorizing ordinance, whichever shall last occur ("Commencement Date"), and to end on the last day of April, 2019, ("Termination Date"), subject to the default provisions herein contained. Tenant shall have the right to renew this Lease for two (2) additional one (1) year terms, under the same terms and conditions of this Lease, provided, however, that the Tenant at the time of such renewal shall not be in default of any of the covenants and agreements contained in this Lease, and further provided that the Tenant shall have provided written notice to Landlord of Tenant's intention to exercise its right to renew the Lease no later than ninety (90) days prior to the expiration of the current lease term.

2. **USE.** Tenant covenants and agrees to use and occupy the Demised Premises as a business office and for no other purpose.

3. **ACCEPTANCE OF PREMISES**. Tenant acknowledges that it is familiar with the Demised Premises and hereby agrees to accept the Demised Premises in their present condition, as is. Tenant further acknowledges that neither Landlord nor anyone on Landlord's behalf has made any representations or warranties with respect to the condition of the Demised Premises.

Tenant understands that the Demised Premises are part of the Main Street Parking Garage complex and that other portions of the building will be utilized in a manner consistent with that purpose.

4. **BASE RENT**. The rental payments ("Base Rent") will be payable in equal monthly installments of $1,163.21 for the first year of the term of this Lease.

During the remaining years of this Lease, including any optional renewal terms, the lease rates shall be adjusted three percent (3%) annually in the following manner:

May 1, 2017 to last day of April, 2018	$1,198.11/mo
May 1, 2018 to last day of April, 2019	$1,234.05/mo
May 1, 2019 to last day of April, 2020	$1,271.07/mo
May 1, 2020 to last day of April, 2021	$1,309.13/mo

Each monthly installment of rent shall be made promptly in advance of the first day of each and every month during the term of this lease without demand and without offset or deduction, together with such additional rent and other charges required to be paid by Tenant as are hereinafter set forth in this Lease ("Additional Rent").

No payment by Tenant or receipt by Landlord of a lesser amount than the Base Rent or Additional Rent stipulated in this lease shall be deemed other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or payment, or any writing accompanying any check or payment of such rent, be deemed an accord and satisfaction, and

Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease.

The rent payments shall be paid by check or money order made payable to the City Treasurer and sent to the Office of Real Estate, 232 East Main Street, Norfolk, Virginia, 23510.

5. **ADDITIONAL RENT**. Additional Rent payable by Tenant shall include:

(a) all taxes, leasehold taxes, assessments, utilities (as noted in Section 10) and other governmental charges, excluding charges arising from hazardous substances deposited prior to Tenant's tenancy assessed against or levied upon the Demised Premises or related to the use or occupancy thereof;

(b) all other expenses and charges which, during the term hereof, shall arise, be levied, assessed or imposed upon or against the Demised Premises as an incident of the ownership thereof and which are of the kind customarily paid by owners of land and buildings by reason of such ownership, it being the intention hereof that, during the term of this Lease, Tenant shall be chargeable with and shall pay all sums which an owner of the Demised Premises would pay, having regard to the safeguarding of his investments and the preservation of the freehold.

(c) notwithstanding anything in this Lease to the contrary, Tenant does not hereby become responsible or in any manner whatsoever assume liability for environmental conditions or liabilities existing prior to its occupancy hereunder, or for such conditions not caused or permitted by Tenant.

Each of the items payable as Additional Rent shall be paid on or before the date when each becomes due, except Tenant may pay any tax, assessment, water rent or other governmental charge after it becomes due but before any penalty or interest accrues thereon. Landlord shall furnish to Tenant any and all bills for items payable as Additional Rent in sufficient time for payments to be made by Tenant. Landlord agrees to elect to pay any future assessment which may be levied against

the Demised Premises in the maximum number of installments permitted by law. Tenant shall furnish to Landlord, within thirty (30) days after the date upon which any such charge is payable by Tenant as hereinabove provided, official receipts of the appropriate taxing or governmental authority, or other proofs satisfactory to Landlord, evidencing the payment of Additional Rent. If Tenant shall fail to make any payment or to do any act required of it by any provision of this Lease, Landlord may make such payment or do such act and the amount of such payment, or the cost of doing such act, together with interest thereon at the rate of 18% per annum, shall be deemed Additional Rent payable by Tenant upon demand by Landlord. The making of any such payment or the doing of any such act by Landlord shall not constitute a waiver by Landlord of any right or remedy provided by this Lease upon Tenant's default in the making of such payment or the doing of such act. All taxes, assessments, and other governmental charges assessed against or levied upon the Demised Premises shall be apportioned as between Landlord and Tenant at the Commencement Date and Termination Date.

Tenant shall have the right to contest or review by appropriate proceedings or in any other manner permitted by law, at Tenant's sole cost and expense, in Tenant's name or in Landlord's name, or both, any tax, assessment or charge, and Landlord shall, without expense or charge to it, cooperate with Tenant and execute any documents or pleadings required for such purposes. If required by Landlord, Tenant shall furnish a surety company bond, or other security reasonably satisfactory to Landlord, against any liens by reason of such contest. The aforesaid contest by Tenant may include appeals from any judgments, decrees or orders until a final non-appealable determination shall be made by a court or governmental department or authority having jurisdiction in the matter.

6. **TRASH REMOVAL AND JANITORIAL SERVICES**. As Demised Premises are part of the Main Street Parking Garage complex, Tenant is part of a common trash removal

service provided by the Landlord. Tenant shall store all trash, rubbish and garbage in fully closed containers at the rear of the Demised Premises in the loading dock area off of Atlantic Street. Tenant shall not burn or otherwise inappropriately dispose of any trash, waste, rubbish or garbage in and or about the Demised Premises. Any expenses incurred by Landlord related to the removal of such inappropriate disposal shall be reimbursed by Tenant.

Tenant shall supply its own janitorial services.

7. **SECURITY DEPOSIT**. Tenant deposited with Landlord and Landlord retains a Security Deposit ("Deposit") in the amount of One Thousand Thirty Three Dollars and 50/100 ($1,033.50) as security for the full and faithful performance by Tenant of all terms and covenants of this Lease required to be performed by Tenant. If at any time Tenant shall be in default of any of the covenants of this Lease, Landlord is entitled, at its discretion, to use the Deposit, or so much thereof, as may be necessary to rectify or cure such default. In the event that the Landlord utilizes the Deposit, Tenant shall promptly restore same to Landlord upon Landlord's demand. No interest shall be paid by Landlord to Tenant with respect to the Deposit. The Deposit, or the portion that remains, shall be returned to Tenant following the termination of this Lease, provided that Tenant has fully and faithfully carried out all its terms and covenants and paid up all its Base Rent, Percentage Rent, Additional Rent and/or adjustments and Late Charges.

8. **CHANGE IN SCOPE OF TAXATION**. If at any time during the term of this Lease, the method or scope of taxation prevailing on the date hereof shall be altered, modified or enlarged so as to cause the method of taxation to be changed, in whole or in part, so that in substitution for the real estate taxes now assessed there may be, in whole or in part, a capital levy or other imposition based on the value of the Demised Premises, or the rents received therefrom, or some other form of assessment based in whole or in part on some other valuation of the Landlord's real property comprising the Demised Premises, then the substituted tax or imposition

shall be payable and discharged by Tenant in the manner required pursuant to the law promulgated which shall authorize the change in the scope of taxation, and as required by the terms and conditions of this Lease.

Nothing contained in this Lease shall require Tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of Landlord, or federal income or state income tax or excess profits or revenue tax, except to the extent such taxes; are imposed in whole or partial substitution for real property taxes.

If any tax which Tenant is required to pay as previously stated is a graduated tax, Tenant shall be required to pay only the portion thereof which would have been payable by Landlord if the Demised Premises were the only real property owned by Landlord.

9. **INSURANCE**. Tenant, at its own cost and expense, shall obtain and maintain during the Term insurance of the types and in the amounts described below. Unless otherwise specifically approved by the Landlord, general liability policies will be written in an "occurrence" ISO form approved for coverage in the Commonwealth of Virginia. The "City of Norfolk, VA, and its employees" will be included as "Additional Insured" on such policies. All insurance policies affected by this agreement shall be primary and noncontributory to any other insurance or self-insurance maintained by Landlord. Policy limits may be met via either a singular policy, or in combination with primary and excess, or umbrella, insurance policies. All policies shall provide that the Landlord will receive at least thirty (30) days written notice in the event of cancellation of, or material change in, any of the policies. If the Tenant fails to maintain the insurance as set forth in this Lease, Landlord shall have the right, but not the obligation, to purchase such insurance at Tenant's expense.

COMMERCIAL GENERAL LIABILITY INSURANCE (CGL) with a limit of not less than $1,000,000 each occurrence, $2,000,000 general aggregate. CGL and shall cover liability arising from premises, operations, independent lessees, products-completed

operations, personal injury and liability assumed under insured contract.

WORKER'S COMPENSATION INSURANCE AND EMPLOYER'S LIABILITY INSURANCE: The Tenant shall maintain the applicable statutory Workers' Compensation Insurance, and Employer's Liability Insurance with a limit of at least $500,000 per accident/disease, and policy limit of $500,000.

PROPERTY INSURANCE: Tenant further covenants that it will, at all times during the Lease Term and at its own cost and expense, carry insurance against damage by fire or other perils in an amount equal to the replacement value thereof on Tenant's inventory, furniture, fixtures and equipment and all parts of the Demised Premises for which the Tenant is responsible as described in this agreement.

INSURANCE POLICIES/CERTIFICATE OF INSURANCE: Tenant shall furnish the Landlord with two (2) copies of the policies, or a certificate(s) of insurance evidencing policies, required above in this Agreement. The certificate(s) shall specifically indicate that the insurance includes any extensions of coverage required herein. In the event of cancellation of, or material change in, any of the policies, the Tenant shall notify the Landlord within at least 14 days after receiving notice of such cancellation or policy change and provide evidence that insurance coverage is in place to meet the requirements of this agreement.. If coverage on said certificate(s) is shown to expire prior to completion of all terms of this lease, the Tenant shall furnish a certificate of insurance evidencing renewal of such coverage to the Landlord within 10 days of the effective date such renewal. All certificates shall be executed by a duly authorized representative of each insurer, showing compliance with the requirements of this agreement. Failure of the Landlord or the Landlord's designated agents for this Agreement, to (1) demand such certificates or other evidence of full compliance with these requirements, and, or (2) identify a deficiency from evidence that is provided shall not be construed as a waiver of the Tenant's obligation to maintain such insurance.

Each insurance policy shall be so written as to protect the Landlord and the Tenant, as their respective interests may appear, and the insurance policies shall include a waiver of subrogation. If the Tenant fails to provide such insurance, Landlord may terminate this Lease with ten (10) days notice to Tenant. Certificates of Insurance verifying all required insurance policies shall be delivered to the Landlord prior to the Tenant's occupancy or build-out of the Demised Premises.

Tenant agrees to look solely to the proceeds of Tenant's own insurer for indemnity against exposure for casualty losses of property or business interruption. Tenant warrants that its liability, property and business interruption insurers shall have no rights against Landlord by virtue of assignment, loan agreement or otherwise.

Tenant shall indemnify Landlord for and against any and all claims, demands, suits, actions and judgments of any kind or nature whatsoever, including costs and expenses, for any personal injury or property damage to any person, or property, arising or resulting, directly or indirectly, from the entry onto the Demised Premises by Tenant or Tenant's agents.

10. **UTILITIES**. The Demised Premises are individually metered for electrical service. Tenant shall make arrangements to have the electrical service to the Demised Premises billed directly to the Tenant and promptly pay for all charges when due in connection with the use of the Demised Premises.

Tenant shall pay Landlord, as Additional Rent, its prorated share of the expenses for providing HVAC, water and sewerage, and trash collection to the Demised Premises. Tenant and Landlord expressly agree that the monthly charge of One Hundred Twenty-Eight Dollars and 75/100 ($128.75) shall be Tenant's prorated share of the HVAC, water and sewerage, and trash collection expenses provided to the Demised Premises and electricity and gas used in connection with the operation of the HVAC. This monthly charge shall be increased by three (3%) percent each year of term.

11. **REPAIRS**. Tenant shall keep and maintain the Demised Premises in a good and complete state of repair and condition, except for ordinary wear and tear. Tenant shall make all repairs and replacements of every kind and character, to include, but not be limited to, store front glass, and maintain the Demised Premises and the appurtenances belonging thereto, and will not call upon Landlord during the term of this lease for the making of any repairs or replacements whatsoever. All repairs and replacements shall:

(a) be performed in a good and workmanlike manner,

(b) be at least substantially equal in quality and usefulness to the original work,

(c) be of first-class modern character, and

(d) not diminish the overall value of the Demised Premises.

In this context, Demised Premises refers to the partitions, ceilings, floors and other improvements heretofore or hereafter constructed at Tenant's expense.

12. **REQUIREMENTS OF PUBLIC AUTHORITIES**. Tenant shall suffer no waste or injury in or about the Demised Premises and shall comply with all federal, state, county and municipal laws, ordinances and regulations applicable to the structure, use and occupancy of the Demised Premises, including, without limiting the generality of the foregoing, the making of any structural repairs that may be required in order to comply with said laws, ordinances and regulations. In addition, Tenant shall effect the correction, prevention and abatement of nuisances, violations or other grievances in upon or connected with the Demised Premises and shall also promptly comply with all rules, orders and regulations of the Board of Fire Underwriters and any insurance company insuring the Demised Premises. In this context, Demised Premises refers to the partitions, ceilings, floors and other improvements heretofore and hereafter constructed at Tenant's expense.

13. **LANDLORD'S RIGHT TO CURE**. Landlord and its agents and workmen shall have the right to enter into and upon the Demised Premises at all reasonable times for the purpose of inspection and examination of the state or repair and condition thereof. Landlord may, but shall not be obligated to make such repairs as shall be necessary as a consequence of any failure of Tenant to meet its obligations under this Lease. The cost of any such repairs undertaken by Landlord, together with interest thereon at the rate of 18% per annum, shall be deemed to be Additional Rent payable by Tenant upon demand by Landlord. The making of any such repairs by Landlord shall not constitute a waiver by Landlord of any right or remedy provided by this Lease upon Tenant's default in the making of repairs.

14. **NET RENT**. It is the purpose and intent of Landlord and Tenant that the rent shall

be absolutely net to Landlord, except as may be otherwise provided herein. The Base Rent specified in Section 4, shall be paid each month during the Term of this Lease without any abatement, deduction, set off or counterclaim, except as hereinafter provided, and all costs, expenses and obligations of every kind and nature whatsoever relating to the premises which may arise or become due during the Term of this Lease, unless the charge or obligation arises as a result of an Event of Default (as hereinafter defined) by Tenant hereunder, shall be paid each month by Tenant as set forth herein.

15. **DESTRUCTION**. If, during the Term of this Lease, the Demised Premises or any part thereof, including portions of the building not occupied by the Tenant, shall be damaged by fire, storm, or other casualty, Landlord shall not be obligated to repair or rebuild the same, and if the Demised Premises become untenantable due to fire, storm, or other casualty and would not be rendered tenantable by Tenant's discharge of the obligation to maintain and repair the Demised Premises, as therein defined, this lease shall immediately terminate, provided always that there shall be no cessation of rent if the damages shall have been the result of the negligence, default, or willful act of Tenant or its agents or employees.

16. **INDEMNIFICATION**. Tenant shall indemnify and save harmless Landlord from all fines, penalties, costs, suits, proceedings, liabilities, damages, claims and actions of any kind arising out of the use and occupation of the Demised Premises by reason of any breach or nonperformance of any covenant or condition of this Lease by Tenant, or by Tenant's intentional act or negligence, and not caused in whole or in part by Landlord. This indemnification shall extend to all claims of any person or party for death or injury to persons and damage to any property, and to legal expenses, including reasonable attorney's fees, incurred by Landlord in the defense of such claims or incurred by Landlord as a result of a breach of any provision of this Lease by the Tenant, but does not extend to circumstances caused in whole or in part by Landlord. Tenant shall not be

responsible for damage to the building resulting from acts of nature or for structural damage which it is not the fault of Tenant with the exception of replacement of the glass storefront.

17. **NON-LIABILITY OF LANDLORD**. Landlord shall not be liable for any damage or injury which may be sustained by Tenant or any other person as a consequence of the failure, breakage, leakage or obstruction of the water, plumbing, steam, gas, sewer, drains, leaders, gutters, valleys or the like, or of the electrical, or sprinkler, equipment, if any, in the Demised Premises; or by reason of the elements not caused in whole or in part by Landlord.

18. **ALTERATIONS**. Tenant covenants and agrees that it will not make any material improvements, changes, installations, renovations, additions or alterations in and about the Demised Premises without the prior written consent of Landlord. All such alterations and improvements are to be at the sole expense of the Tenant.

Replacement of signage in order to identify Tenant business must be in compliance with the City of Norfolk Zoning Ordinance.

19. **ASSIGNMENT AND SUBLETTING**. Tenant will not assign this Lease or sublet the Demised Premises.

20. **AIR AND WATER POLLUTION**. Tenant expressly covenants and agrees to indemnify, defend and save Landlord harmless against any claim, damage, liability, cost, penalty, or fine which Landlord may suffer as a result of air, noise or water pollution caused by Tenant in its use of the Demised Premises. Tenant covenants and agrees to notify Landlord immediately of any claim or notice served upon it containing any allegation that Tenant is causing air, noise, or water pollution. Tenant, in any event, will take immediate steps to halt, remedy or cure any such pollution caused by Tenant in connection with its use of the Demised Premises.

21. **COVENANT AGAINST LIENS**. Tenant agrees that it shall not encumber, or suffer or permit to be encumbered, the Demised Premises or the fee thereof by any lien, charge or

encumbrance, and Tenant shall have no authority to mortgage or hypothecate this Lease in any way whatsoever.

22. **ENVIRONMENTAL.**

(a) For purposes of this section:

(i) "Hazardous Substances" include any pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials or hazardous substances as defined in or pursuant to the Resource and Conservation Recovery Act (42 U.S.C. § 6901 et seq.) ("RCRA"), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.) ("CERCLA") or any other federal, state or local environmental law, ordinance, rule or regulation.

(ii) "Release" means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, disposing, or dumping.

(iii) "Notice" means any summons, citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, actual or threatened, from any authority of the Commonwealth of Virginia, the United States Environmental Protection Agency (USEPAII) or other federal, state or local agency or authority, or any other entity or any individual, concerning any intentional act or omission resulting or which may result in the Release of Hazardous Substances into the waters or onto the lands of the Commonwealth of Virginia, or into waters outside the jurisdiction of the Commonwealth of Virginia or into the "environment," as such terms are defined in CERCLA. "Notice" shall include the imposition of any lien on any real property, personal property or revenues of the Tenant, including but not limited to the Tenant's, interest in the Demised Premises or any of the Tenant's property located thereon, or any violation of federal, state or local environmental laws, ordinances,

rules, regulations, governmental actions, orders or permits, or any knowledge, after due inquiry and investigation, or any facts which could give rise to any of the above.

(b) To the extent that Tenant may be permitted under applicable law to use the Demised Premises for the generating, manufacture, refining, transporting, treatment, storage, handling, disposal, transfer or processing of Hazardous Substances, solid wastes or other dangerous or toxic substances, Tenant shall insure that said use shall be conducted at all times strictly in accordance with applicable statutes, ordinances and governmental rules and regulations. Tenant shall not cause or permit, because of any intentional or unintentional act or omission, a Release of Hazardous Substances on the Demised Premises. If any such intentional or unintentional act or omission causes a Release of Hazardous Substance on the Demised Premises, Tenant shall promptly clean up and remediate such Release in accordance with the applicable federal, state and local regulations and to the reasonable satisfaction of Landlord.

(c) Tenant shall comply with all applicable federal, state, and local environmental laws, ordinances, rules and regulations, and shall obtain and comply with all permits required thereunder, any successor, or new environmental laws. Upon the receipt of any Notice, Tenant shall notify Landlord promptly in writing, detailing all relevant facts and circumstances relating to the Notice.

(d) The requirements of this section shall apply to any successor in interest to Tenant, whether due to merger, sale of assets or other business combination or change of control.

(e) Tenant hereby agrees to defend (with counsel satisfactory to Landlord) and indemnify and hold Landlord harmless from and against any and all claims, losses, liabilities, damages and expenses (including, without limitation, reasonable cleanup costs and attorney's fees arising under this indemnity) which may arise directly or indirectly from any use or Release of Hazardous Substances on the Demised Premises and losses and claims against Landlord resulting

from Tenant's failure to comply strictly with the provisions of this section. The provisions of this section shall survive the termination of this permission granted by this Agreement.

23. **SURRENDER BY TENANT AT END OF TERM**. Tenant will surrender possession of the Demised Premises and remove all goods and chattels and other personal property in the possession of Tenant by whomsoever owned, at the end of the Term, or at such other time as Landlord may be entitled to re-enter and take possession of the Demised Premises pursuant to any provision of this Lease, and leave the Demised Premises in as good order and condition as they were on the Commencement Date, reasonable wear and tear excepted. In default of surrender of possession and removal of goods and chattels at the time aforesaid, Tenant will pay to Landlord the rent reserved by the terms of this lease for such period as Tenant either holds over possession of the Demised Premises or allows its goods and chattels or other personal property in its possession at such time to remain in the Demised Premises, and in addition thereto, statutory penalties and all other damages which Landlord shall suffer by reason of Tenant holding over in violation of the terms and provisions of this Lease, including all reasonable claims for damages made by any succeeding tenant or purchaser of the Demised Premises against Landlord which may be founded upon delay by Landlord in giving possession of the Demised Premises to such succeeding tenant or purchaser, so far as such damages are occasioned by the holding over of Tenant.

If Tenant fails to remove all goods and chattels and other personal property in possession of Tenant, by whomsoever owned, at the end of the Term, or at such other time as Landlord may be entitled to re-enter and take possession of the Demised Premises pursuant to any provision of this Lease, Tenant hereby irrevocably makes, constitutes and appoints Landlord as the agent and attorney-in-fact of Tenant to remove all goods and chattels and other personal property, by whomsoever owned, from the Demised Premises to a reasonably safe place of storage, such

moving and storage to be at the sole cost and expense of Tenant, and Tenant covenants and agrees to reimburse and pay to Landlord all expenses which Landlord incurs for the removal and storage of all such goods and chattels. In addition, at the option of Landlord, Tenant shall be deemed to have abandoned such goods, chattels and other personal property and the same shall become the property of Landlord. Tenant shall reimburse and pay Landlord for all expenses incurred in the removing or disposing of the abandoned property.

No act or thing done by Landlord shall be deemed an acceptance of the surrender of the Demised Premises unless Landlord shall execute a written release of Tenant. Tenant's liability hereunder shall not be terminated by the execution by Landlord of a new lease of the Demised Premises.

24. **DEFAULT BY TENANT**. If before or during the Term, there shall occur any of the following events ("Events of Default"):

(a) Tenant makes a general assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due, adjudicated a bankrupt or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or files an answer admitting or not contesting the material allegations of a petition against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of any material part of its assets, and such appointment shall not have been vacated; or

(b) if, within 60 days after the Commencement Date, any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within 60 days after the appointment without the consent or

acquiescence of Tenant of any trustee, receiver or liquidator of Tenant or of any material part of its assets, such appointment shall not have been vacated; or

(c) if the interest of Tenant in the Demised Premises shall be sold under execution or other legal process; or

(d) if Tenant shall fail to pay any installment of Base or Additional Rent within seven (7) days of the due date; or

(e) if Tenant shall fail to perform or observe any requirement, obligation, agreement, covenant or condition of this Lease, other than the payment of any installment of Base Rent or Additional Rent, and any such failure shall constitute for 15 days after Landlord gives Tenant notice thereof, or if such failure cannot be remedied within 15 days, then for a reasonable time thereafter, provided Tenant commences to remedy such failure within said 15 day period and prosecutes the same to completion with diligence; or

(f) if any representation or warranty contained in this Lease shall prove to be incorrect in any material respect on the date upon which it was made; then at any time following any of such Events of Default, Landlord, without waiving any other rights herein available to Landlord at law or in equity, may either (1) give Tenant notice of termination of this Lease, or (2) without terminating this Lease, give Tenant notice of Landlord's intention to re-enter and take possession of the Demised Premises, with or without legal process. The giving of either of such notices to Tenant shall terminate Tenant's right to possession of the Demised Premises under this Lease without prejudice, however, to the rights of Landlord to exercise all other available legal remedies and without discharging Tenant from any of its liabilities hereunder.

If Landlord elects to terminate Tenant's right to possession of the Demised Premises under this section following an Event of Default, Landlord may re-enter and take possession of the Demised Premises, with or without legal process, and Tenant hereby waives any claim for damages

as a result thereof, and Tenant shall be obligated to pay to Landlord as damages upon demand, and Landlord shall be entitled to recover of and from Tenant:

(a) all Base Rent and Additional Rent which are in arrears as of the date of termination of Tenant's right to possession, plus

(b) the cost to Landlord of all reasonable legal and other expenses and costs (including reasonable attorney's fees) incurred by Landlord in obtaining possession of the Demised Premises, in enforcing any provision of this lease, in preserving the Demised Premises during any period of vacancy, in making such alterations and repairs to the Demised Premises as the Tenant was required to make pursuant to the terms of this Lease and in re-letting the Demised Premises, including all reasonable brokerage commissions therefor, plus

(c) either:

(i) in the event of Landlord's giving notice of its intention to re-enter and take possession without terminating this Lease, damages (payable in monthly installments, in advance, on the first day of each calendar month following the giving of such notice and continuing until the date originally fixed herein for the expiration of the then current Term of this Lease) in amounts equal to the Base Rent and Additional Rent herein reserved, less the net amount of rent, if any, which may be collected and received by Landlord for the Demised Premises for and during the balance of the Term hereof; Landlord may re-let the Demised Premises, or any part or parts thereof and Landlord may grant concessions or charge a rental in excess of that provided in this Lease (Tenant shall have no right to any excess); or

(ii) in the event of Landlord's giving notice of termination of this Lease, an award for liquidated damages in an amount which, at the time of such termination, is equal to the excess, if any, of the installments of Base Rent and the aggregate of all sums payable hereunder as Additional Rent for the period which would otherwise have constituted the unexpired portion of

the then Term of this Lease, plus the value of all other considerations to be paid or performed by Tenant during such period, over the fair rental value of the Demised Premises, as of the date of such termination, for such unexpired portion of the then Term of this Lease, or any part thereof if re-let by Landlord for the unexpired Term of this Lease, or any part thereof. If Landlord shall elect to re-enter and take possession without terminating this Lease, Landlord shall have the right at any time thereafter to terminate this Lease for such previous default, whereupon the provisions of this subsection with respect to termination will thereafter apply. Landlord will make reasonable effort to mitigate its damages.

Landlord may sue for and collect any amounts which may be due pursuant to the provisions above from time to time as Landlord may elect, but no such suit shall bar or in any way prejudice the rights of Landlord to enforce the collection of amounts due at any time or time thereafter by a like or similar proceeding.

Tenant agrees to pay all costs of proceedings by Landlord for the enforcement of any breach of the terms and conditions of this Lease by the Tenant, including reasonable attorney's fees and expenses, which shall be deemed Additional Rent for the period with respect to which the Event of Default occurred, if Landlord is the prevailing party in such suit.

No remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. The receipt and acceptance by Landlord of Rent with knowledge of the default by Tenant in any of Tenant's obligations under this Lease shall not be deemed a waiver by Landlord of such default. Nothing contained in this Lease shall limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy or insolvency an amount equal to the maximum allowed by any statute or rule of law in effect at the time when and governing the Proceedings, in which

the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above.

No waiver by Landlord of any Event of Default or any default by Tenant in any covenant, agreement or obligation under this Lease shall operate to waive or affect any subsequent Event of Default or default in any covenant, agreement or obligation hereunder, nor shall any forbearance by Landlord to enforce a right or remedy upon an Event of Default or any such default be a waiver of any of its rights and remedies with respect to such or any subsequent default or in any other manner operate to the prejudice of Landlord.

25. **LATE FEE**. For any payments of Base Rent or Additional Rent paid after the date such payments were due, Tenant shall pay a late fee of 5% of the amount not paid when due. The payment of any late fee shall not in any way be curative of any Event of Default and payments pursuant to this section shall not affect any of the Landlord's rights and remedies under Section 24.

26. **NO JOINT VENTURE**. It is hereby agreed that nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant, or between Landlord and any other party, or cause either party to be responsible in any way for the debts or obligations of the other party.

27. **QUIET ENJOYMENT**. Landlord covenants that Tenant, on paying the Rent and performing the covenants and conditions contained in this Lease, shall and may peaceably and quietly have, hold and enjoy the Demised Premises for the term aforesaid.

28. **CERTIFICATES BY TENANT AND LANDLORD**. Tenant and Landlord agree at any time and from time to time during the Term of this Lease, within ten (10) days after written request from the other, to execute, acknowledge and deliver to the requesting party or to a third party a statement in writing certifying that this lease is unmodified and in full force and effect

(or if there have been modifications, that the same is in full force and effect as modified and stating the modification), and the dates to which the Base Rent, Additional Rent and other charges have been paid in advance, if any, and stating whether or not, to the best knowledge of the party, the requesting party is in default in the performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such default of which such party may have knowledge. Such third party shall have the right to rely upon the contents of any such written statement.

29. **NOTICES**. Whenever it is provided herein that notice, demand, request or other communication shall or may be given to or served upon either of the parties, or if either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or the Demised Premises, each such notice, demand, request or other communication shall be given in writing either by hand delivery, overnight courier or by mailing same by registered or certified mail return receipt requested, with proper postage pre-paid and any law or statute to the contrary notwithstanding, shall be given or served as follows:

Landlord: City of Norfolk
Room 306, City Hall Bldg
810 Union Street
Norfolk, Virginia 23510
Attn: Manager of Real Estate

Tenant: Rover Marine, Inc.
P. O. Box 3125
Norfolk, Virginia 23514
Attn: Tom Van Benschoten

or at such other address as either of the parties may from time to time designate by written notice.

Every notice, demand, request or other communication hereunder shall be deemed to have been given or served at the time that the same shall be hand delivered or deposited in the United States mail, postage prepaid, in the manner aforesaid.

30. **CAPTIONS**. The captions to the sections of this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of this lease or any part thereof nor in any way affect this Lease or any part thereof.

31. **COVENANTS AND CONDITIONS**. All of the terms and provisions of this Lease shall be deemed and construed to be "covenants" and "conditions" to be performed by the respective parties as though words specifically expressing or importing covenants and conditions were used in each separate term and provision hereof.

32. **WAIVER OF TRIAL BY JURY**. Landlord and Tenant hereby mutually waive their rights to trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, Tenant's use or occupancy of the Demised Premises, and any claim of injury or damage.

33. **DEFINITION OF TERM "LANDLORD"**. When the term "Landlord" is used in this Lease, it shall be construed to mean and include only the then owner of the fee title of the Demised Premises. Upon transfer by Landlord of the fee title to the Demised Premises, Landlord shall give Tenant notice in writing of the name and address of Landlord's transferee. In such event, the then Landlord shall be automatically free and relieved from and after the date of such transfer of title of all personal liability with respect to the performance of any of the covenants and obligations on the part of Landlord herein contained to be performed, provided any such transfer and conveyance by Landlord is expressly subject to the assumption by the grantee or transferor of the obligations of Landlord to be performed pursuant to the terms and conditions of this Lease.

34. **BROKERAGE REPRESENTATION**. Landlord shall have no obligation for the payment of any real estate commission in regard to this Lease, and Tenant shall indemnify and hold harmless Landlord from and against any claim by a real estate agent for any commission relative to this Lease.

35. **ENTIRE AGREEMENT**. This Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties.

36. **APPLICABLE LAW**. This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, and any suit arising out of this Lease only shall be brought in the State or Federal Courts located in the State of Virginia. In the event of any such suit, the parties hereto consent to the personal jurisdiction of such courts and waive any defense based on improper venue.

37. **BIND AND INURE CLAUSE**. The terms, covenants and conditions of this Lease shall be binding upon and inure to the benefit of each of the parties hereto, and their respective successors and assigns.

38. **TENANT'S RECOURSE**. In any action or proceeding brought by Tenant against Landlord on this Lease, Tenant shall look solely to the Landlord's interest in the Demised Premises for the payment of any damages or satisfaction of any liabilities or obligations of Landlord, and no judgment obtained by Tenant shall be enforceable against, or a lien upon, any property of Landlord other than the Demised Premises.

39. **LANDLORD'S RIGHT TO ENTER**. Landlord and its agent shall have the right to enter into and upon the Demised Premises, after giving notice to Tenant, for the purpose of inspection and to make any repairs necessary to the Landlord's property.

40. **PARKING.** At the discretion of the Tenant, Landlord agrees to make available two (2) unreserved parking spaces for Tenant's use within the attached parking garage. Tenant is responsible for making arrangements with the City of Norfolk Parking Division and paying the costs of parking at published rates per space, per month.

41. **TENANT'S RIGHT OF ENTRY**. Landlord hereby grants Tenant the right to enter into the Demised Premises not more than thirty (30) days prior to the effective date of authorizing ordinance, solely at their own risk, for the purpose of building out the Premises in connection with the intended use. Landlord shall approve design or construction. Prior to entering the Premises, Tenant will deliver to the Landlord the Insurance Certificates as required in Section 9. If for any reason the Tenant shall not occupy the Demised Premises as permitted by this Lease and has, however, commenced build out for the proposed use prior to the effective date of authorizing ordinance, Tenant shall repair any damage to the Demised Premises and shall restore all disturbed areas to its original condition.

IN WITNESS WHEREOF, the parties have executed or have caused this Lease to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

(SIGNATURE PAGES FOLLOW)

CITY OF NORFOLK

By: _____ (SEAL)
City Manager

ATTEST:

_____
City Clerk

COMMONWEALTH OF VIRGINIA,
CITY OF NORFOLK, TO-WIT:

I, _____, a Notary Public in and for the City of Norfolk, in the State of Virginia, whose term of office expires on the ____ day of _____, _____, do hereby certify that Marcus D. Jones, City Manager, and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names are signed to the foregoing Lease Agreement, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this ____ day of _____, 2016.

_____
Notary Public
Registration No._____

APPROVED AS TO CONTENTS:

_____
Director of General Services

APPROVED AS TO FORM AND CORRECTNESS:

_____
Deputy City Attorney

ROVER MARINE, INC.

By: _____
Title: _____

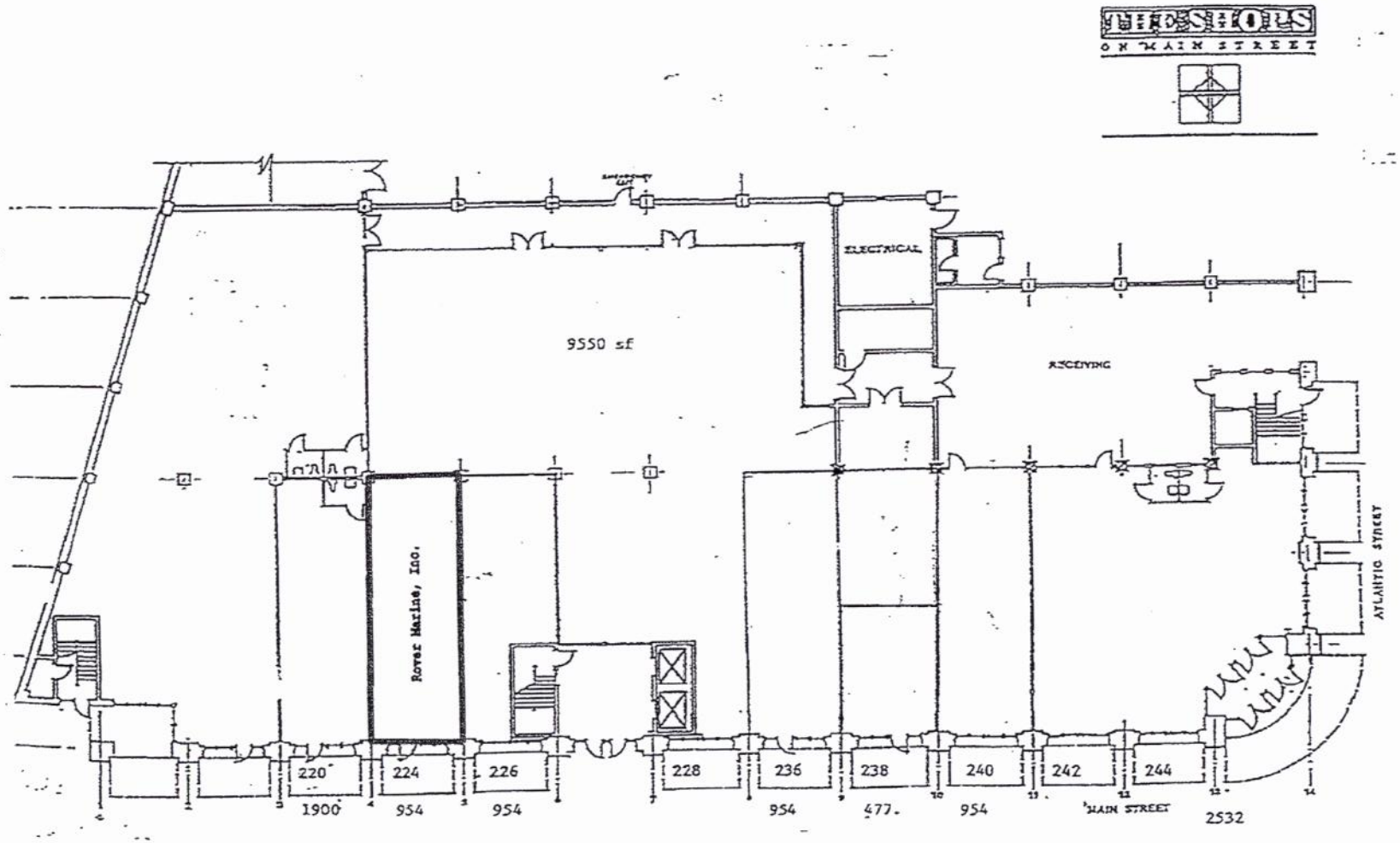
COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____, to-wit:

I, _____, a Notary Public in and for the City of _____, in the Commonwealth of Virginia, do hereby certify that _____, _____ (Title) of Rover Marine, Inc., whose name is signed to the foregoing Lease Agreement, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this ____ day of _____, 2016.

_____
Notary Public
Registration No._____

Exhibit A


ON MAIN STREET
9550 sf
ELECTRICAL
RECEIVING
Rover Marine, Inc.
ATLANTIC STREET
MAIN STREET
220
224
226
228
236
238
240
242
244
1900
954
954
954
477
954
2532

C: Dir., Department of Public Works

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

April 26, 2016

From: David Ricks, Director of Public Works

Subject: Encroach into the right-of-way of at 433 Granby Street with signage

Reviewed: _____
Ronald H. Williams, Jr., Deputy City Manager

Ward/Superward: 2/6

Approved: _____
Marcus D. Jones, City Manager

Item Number: **R-1**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** 433 Granby St LLC
427 Granby Street
Norfolk, Virginia 23510

III. **Description:**
This agenda item is an ordinance permitting 433 Granby St, LLC ("433 Granby") to encroach into the City of Norfolk's (the "city's") right-of-way at 433 Granby Street with signage.

IV. **Analysis:**
The encroachment in this location will allow 433 Granby to install a sign to identify their business.

V. **Financial Impact:**
Liability insurance has been provided naming the city as additional insured in the amount of $1,000,000; therefore, there should be no financial risk to the city. The city did not charge a fee for this encroachment.

VI. **Environmental:**
N/A

VII. **Community Outreach/Notification:**
Public notification for this agenda item was conducted through the city's agenda notification process.

810 Union Street #1101 ▪ Norfolk, Virginia 23510
Phone: 757-664-4242 ▪ Fax: 757-664-4239

VIII. Board/Commission Action:

The Department of Public Works, the Department of Planning & Community Development, and the City Attorney's Office has reviewed this request for encroachment and offer no objections. The encroachment was reviewed and recommended by the Norfolk Design Review Committee and the City Planning Commission.

IX. Coordination/Outreach:

This letter and ordinance have been coordinated with Department of Public Works and the City Attorney's Office.

Supporting Material from the Department of Public Works:

- Ordinance
- Exhibit A

3/25/2016 - wld

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By Richard Brandt for D. Ricks
DEPT. Public Works

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE PERMITTING 433 GRANBY STREET, LLC TO ENCROACH INTO THE RIGHT-OF-WAY AT 433 GRANBY STREET WITH SIGNAGE.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That permission is hereby granted to 433 Granby Street, LLC ("433") to encroach into the right-of-way at 433 Granby Street with signage as shown on Exhibit A, attached hereto, such permission being further subject to the following conditions:

(A) That this permission is expressly subject to the right of revocation by the Council and that in the event of such revocation, 433, or its successors and assigns, shall immediately remove the encroaching structures.

(B) That upon the removal of the encroaching structures or any part thereof, the authority hereby granted shall cease and terminate.

(C) That 433, or its successors and assigns, at its own cost and expense, shall take out and keep in full force and effect during the term of this encroachment commercial general liability insurance with a company authorized to do business in the Commonwealth of Virginia. The amount of insurance shall be at least $1,000,000.00 each occurrence and $2,000,000.00 general aggregate against liability from claims, actions and suits that may be asserted or brought against the City of Norfolk ("City") and/or 433, and its successors and assigns, for any injury to, or death of, any person or persons or for any damage to, or destruction of property resulting from the installation, maintenance, or existence of said encroaching structures. City shall be named as additional insured under such insurance, and a copy of the insurance policy, or a certificate of

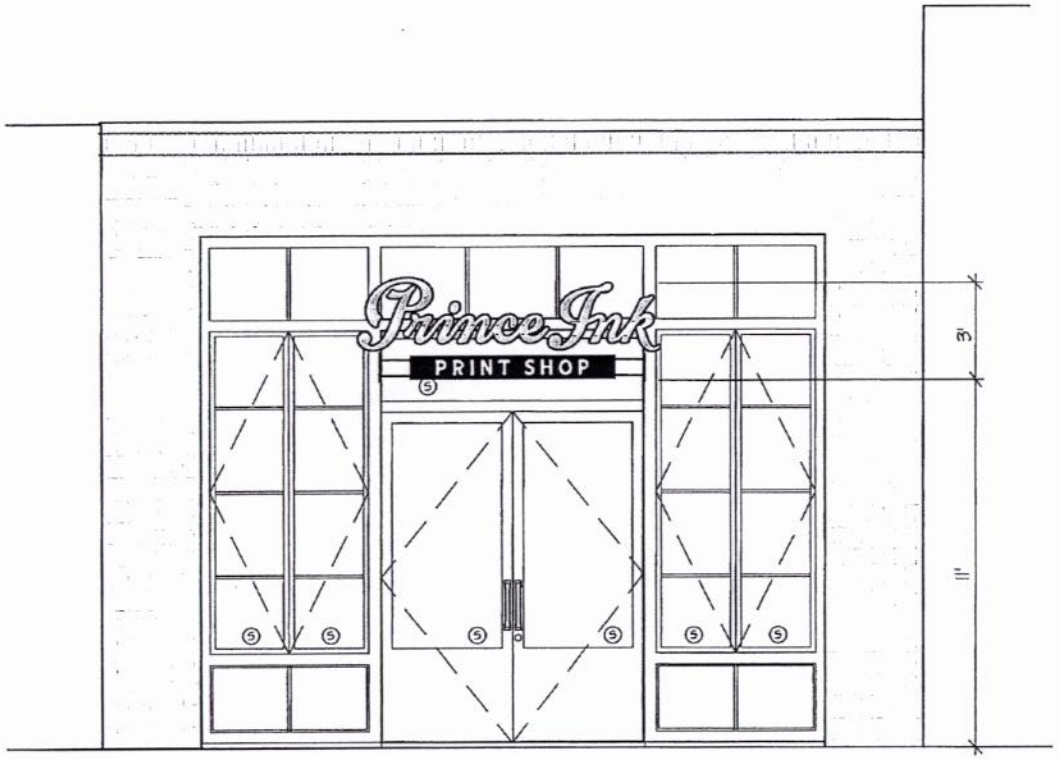
insurance, evidencing the insurance coverage, including any renewals or significant changes in coverage, shall be provided to the City.

(D) That the City shall not be responsible for any damage to the encroaching structures, including replacement and reinstallation costs, resulting from the City's operation, maintenance, repair, or replacement of any utilities located at 433 Granby Street.

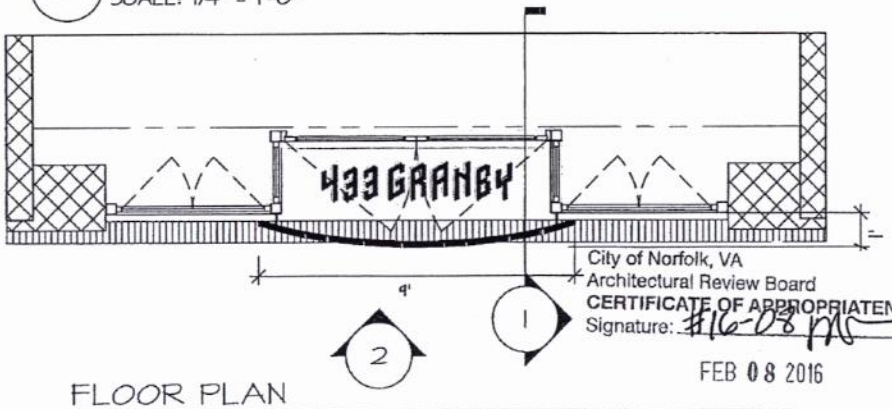
Section 2:- That the failure of 433, or its successors and assigns, to fully comply with all requirements and conditions set forth herein shall act as an automatic revocation of the permission granted hereby.

Section 3:- That the use of the said encroaching structures shall be deemed an acceptance by 433, and its successors and assigns, of all conditions to which the permissions herein are granted.

Section 4:- That this ordinance shall be in effect from and after its adoption.



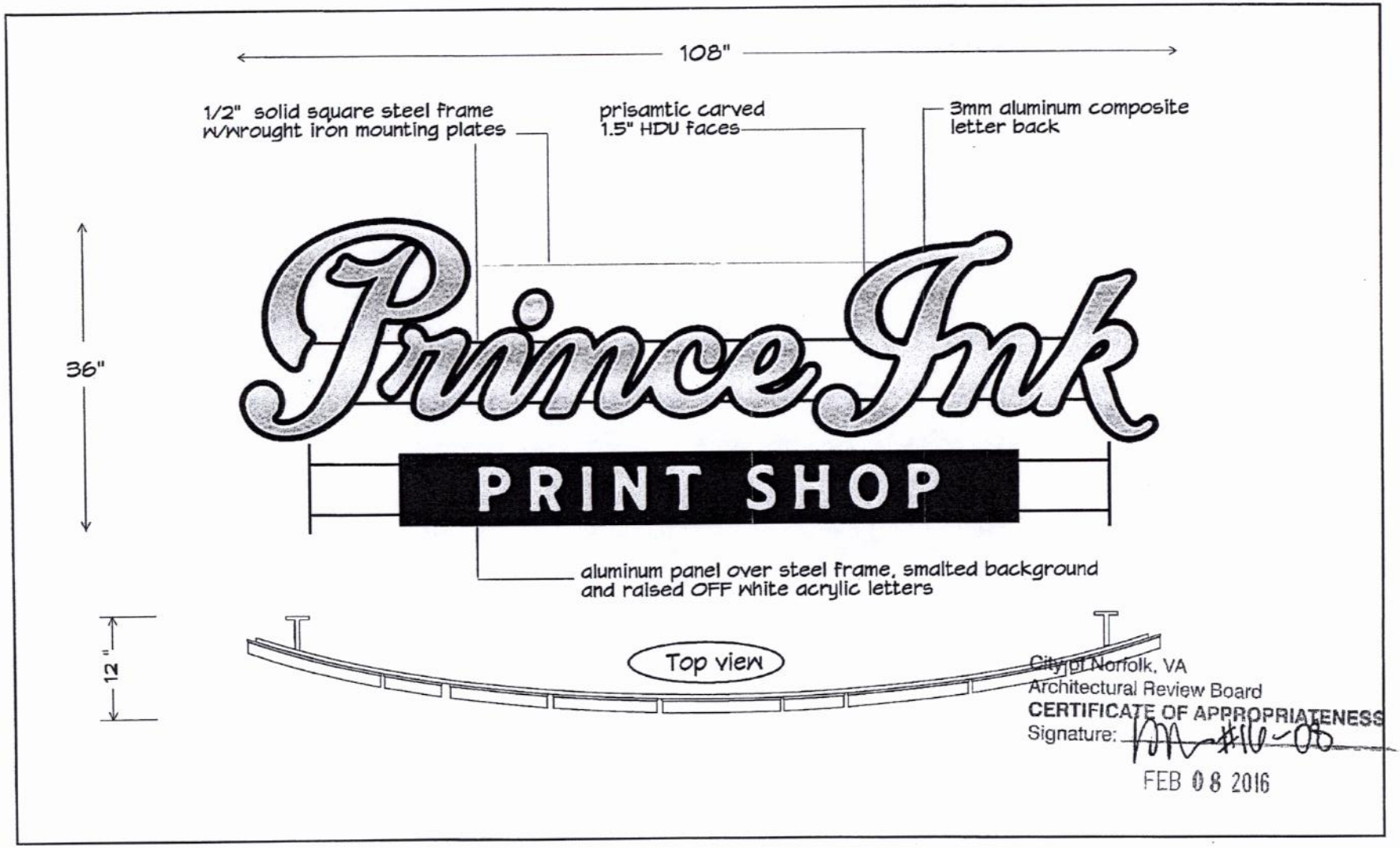
2 ELEVATION
SCALE: 1/4" = 1'-0"



FLOOR PLAN
SCALE: 1/4" = 1'-0"

City of Norfolk, VA
Architectural Review Board
CERTIFICATE OF APPROPRIATENESS
Signature: #16-08 MC
FEB 08 2016

EXHIBIT A TO ORDINANCE


108"
1/2" solid square steel frame
w/wrought iron mounting plates
prisamtic carved
1.5" HDU faces
3mm aluminum composite
letter back
36"
Prince Ink
PRINT SHOP
aluminum panel over steel frame, smalted background
and raised OFF white acrylic letters
12"
Top view
City of Norfolk, VA
Architectural Review Board
CERTIFICATE OF APPROPRIATENESS
Signature: #16-08
FEB 08 2016

C: Dir., Department of General Services

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

April 26, 2016

From: David S. Freeman, AICP
Director of General Services

Subject: Encroachment Agreement with JJB Financial, LLC for Outdoor Dining at 345 Granby Street

Reviewed: Sabrina Joy-Hogg
Sabrina Joy-Hogg, Deputy City Manager

Ward/Superward: 2/6

Approved: Marcus D. Jones
Marcus D. Jones, City Manager

Item Number: **R-2**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** JJB Financial, LLC
345 Granby St.
Norfolk, VA

III. **Description:**
This agenda item is an ordinance to permit JJB Financial, LLC ("JJB") to encroach into the City of Norfolk's (the "city's") right-of-way at 345 Granby Street with an area measuring approximately 109 square feet for use as an outdoor dining area and for no other purpose.

IV. **Analysis**
This encroachment will permit JJB to continue to utilize this area for their establishment's seating options for outdoor dining in addition to their indoor seating. The term of the encroachment is no longer than five (5) years, commencing on February 1, 2016, or the date of any authorizing ordinance, and terminating on January 31, 2021. The permission granted for this encroachment is subject to the right of revocation by the Norfolk City Council.

V. **Financial Impact**

Encroachment Fee (JJB Financial, LLC)	Annual Rent: $654 (to be paid monthly: $54.50 per month)
Liability insurance for JJB Financial, LLC (to be provided by the tenant)	The City has been named as an additional insured in the amount of $1,000,000 per occurrence; therefore, there should be no financial risk to the City

810 Union Street #1101 ▪ Norfolk, Virginia 23510
Phone: 757-664-4242 ▪ Fax: 757-664-4239

VI. Environmental

There are no known environmental issues associated with this property.

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the city's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of General Services – Office of Real Estate and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Proposed Encroachment Agreement

1/21/2016 - wld

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT. General Services

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE GRANTING JJB FINANCIAL, LLC PERMISSION TO ENCROACH INTO THE RIGHT OF WAY AT 345 GRANBY STREET APPROXIMATELY 109 SQUARE FEET FOR THE PURPOSE OF OUTDOOR DINING AND APPROVING THE TERMS AND CONDITIONS OF THE ENCROACHMENT AGREEMENT.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the terms and conditions of the Encroachment Agreement between the City of Norfolk and JJB Financial, LLC ("JJB"), a copy of which is attached hereto as Exhibit A, are hereby approved, and in accordance therewith, permission is hereby granted to JJB to encroach into the right of way at 345 Granby Street approximately 109 square feet for the purpose of outdoor dining and for no other purpose.

Section 2:- That the City Manager and other proper officers of the City are hereby authorized to execute the Encroachment Agreement and do all things necessary for its implementation.

Section 3:- That the City Manager is further authorized to correct, amend or revise the Encroachment Agreement as he may deem advisable consistent with the intent of the Council as expressed therein.

Section 4:- That this ordinance shall be in effect from and after its adoption.

EXHIBIT A TO ORDINANCE

ENCROACHMENT AGREEMENT

This **ENCROACHMENT AGREEMENT** ("Agreement") is made and entered into this ___ day of _____, 2016, by and between the **CITY OF NORFOLK, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia ("City"), and **JJB FINANCIAL, LLC,** a limited liability company, ("JJB"), whose address is 207 Granby Street, Norfolk, Virginia 23510.

WITNESSETH:

1. **ENCROACHMENT AREA:** City hereby grants permission to JJB to encroach into the right of way at 345 Granby Street approximately 109 +/- square feet, as shown on Exhibit A attached hereto ("Encroachment Area"), for the purpose of outdoor dining and for no other purpose.

2. **USE:** JJB, and its tenant(s), shall be permitted to occupy the Encroachment Area for outdoor dining purposes in conjunction with the operation of a dining establishment.

3. **TERM; TERMINATION:** The term of the permission to encroach granted hereby shall be no longer than five (5) years and shall commence on February 1, 2016, or upon the effective date of any authorizing ordinance, whichever shall last occur, and shall terminate on January 31, 2021. However, it is expressly understood that the permission granted hereby is subject to the right of revocation by the Norfolk City Council, and that in the event of such revocation, JJB, and its tenant(s) if requested by City, shall remove the encroaching structures and shall cease using the Encroachment Area.

4. **COMPENSATION:** As compensation for the privilege of encroaching into the right of way, JJB shall pay City an annual encroachment fee in the amount of **Six Hundred Fifty-Four and 00/100 Dollars ($654.00),** to be paid in monthly installments of **Fifty-Four and 00/100 Dollars ($54.50),** beginning on the first day of February, 2016 or the day the ordinance is effective, whichever is later. The encroachment fee shall be paid by check payable to the "Norfolk City

Treasurer" and sent to the Department of General Services, 232 E. Main Street, Suite 250, Norfolk, VA 23510, and Attn: Mr. Jim Resolute.

5. **LATE FEES:** For any late payments received 15 days after the first of each month, JJB shall pay a late fee of five percent (5%) of the amount not paid when due.

6. **UTILITIES:** City shall not be responsible for utilities of any type used within the Encroachment Area. JJB shall pay all utility meter and utility services charges for all utilities, including but not limited to, gas, electricity, water, telephone, sewer, and any other necessary to serve the Encroachment Area.

7. **REPAIRS:** JJB, and its tenant(s), shall keep and maintain the Encroachment Area in good and complete state of repair and condition. JJB, and its tenant(s), shall make all repairs and replacements of every kind to the sidewalks and paved areas of the Encroachment Area in order to preserve and maintain the condition of the Encroachment Area. All such repairs and maintenance shall be performed in a good and competent manner, be at least equal in quality and usefulness to the original components, and not diminish the overall value of the Encroachment Area.

8. **REQUIREMENTS OF PUBLIC LAWS:** JJB, and its tenant(s), shall suffer no waste or injury to the Encroachment Area and shall comply with all federal, state, and municipal laws, ordinances and regulations applicable to the structure, use, and occupancy of the Encroachment Area. In addition, JJB, and its tenant(s), shall effect the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the Encroachment Area.

9. **RIGHT TO ENTER AND CURE:** City shall retain the right to enter upon the Encroachment Area at any time for the purpose of inspecting the Encroachment Area, ascertaining compliance with this Agreement, and making any repairs, which City deems necessary because of

any failure of JJB, and/or its tenant(s), to meet their obligations under this Agreement. The cost of any such repairs shall be deemed additional compensation payable to the City on demand. Any entry upon the Encroachment Area for cure and repair shall be accomplished by City at reasonable times and in the exercise of reasonable discretion by the City. The making of any repairs by City shall not constitute a waiver by City of any right or remedy upon JJB's, and/or its tenant(s)', default in making repairs.

10. **NOTICE:** Any notice shall be in writing and shall be delivered by hand or sent by United States Registered or Certified Mail, postage prepaid, addressed as follows:

City: Department of General Services
Attn: Mr. Jim Resolute
232 E. Main Street, Suite 250
Norfolk, Virginia 23510

JJB : JJB Financial, LLC
Attn: Mr. Buddy Gadams
207 Granby Street
Norfolk, Virginia 23510

With copies to: City Attorney
900 City Hall Building
810 Union Street
Norfolk, Virginia 23510

Either party hereto may change its address to which said notice shall be delivered or mailed by giving notice of such change as provided above. Notice shall be deemed given when delivered (if delivered by hand) or when postmarked (if sent properly by mail).

11. **ENVIRONMENTAL MATTERS:** JJB, and its tenant(s), agree that they will not introduce onto the Encroachment Area any toxic, hazardous, or dangerous materials unless such material is stored, safeguarded, or used in accordance with applicable laws and regulations. JJB, and its tenant(s), will not allow any air, water, or noise pollution to occur in the Encroachment Area. JJB, and its tenant(s), hereby agree to use and occupy the Encroachment Area in a safe and reasonable manner and in accordance with applicable law.

City in turn agrees that JJB, and its tenant(s), shall not be responsible or assume liability for environmental conditions existing on or about the Encroachment Area prior to occupancy by JJB thereof.

12. **DESTRUCTION:** If the encroaching structures or any part thereof shall be damaged or destroyed by fire, lightning, vandalism, or by any other casualty or cause, the permission granted hereby shall be automatically terminated unless the parties agree, in writing, to continue to permit the encroachments granted by this Agreement.

13. **NON-LIABILITY OF CITY:** City shall not be liable for any damage or injury which may be sustained by JJB, its tenant(s), or any other person as a consequence of the failure, breakage, leakage or obstruction of the water, plumbing, steam, gas, sewer, waste or spoil pipes, roof, drains, leaders, gutters, valleys, downspouts or the like, or of the electrical, ventilation, air conditioning, gas, power, conveyor, refrigeration, sprinkler, hearing or other systems, elevators or hoisting equipment, if any, upon the Encroachment Area, or by reason of the elements; or resulting from acts, conduct or omissions on the part of JJB, its tenant(s), or their agents, employees, guests, licensees, invitees, assignees or successors, or on the part of any other person or entity.

14. **REMOVAL OF SNOW:** JJB, and its tenant(s), agree to remove or cause to be removed, as the need for the same arises, snow and ice from the Encroachment Area.

15. **ALTERATIONS:** JJB, and its tenant(s), covenant and agree that they will not make any improvements, changes installations, renovations, additions, or alterations in and about the Encroachment Area without the prior written consent of the City other than the approval given by Norfolk's Design Review Committee and Norfolk's Planning Commission. If JJB, and/or its tenant(s), install or make any improvements, additions, installations, renovations, changes on or to the Encroachment Area with the approval of City, JJB, and its tenant(s), hereby agree to remove, if requested by City, any improvements, additions, installations, and renovations, changes on or to

the Encroachment Area upon termination of this Agreement. In the event JJB, and/or its tenant(s), fail to remove the improvements, additions, installations, renovations, and changes on or to the Encroachment Area when requested to do so by City, then the City may remove the improvements, additions, installations, renovations, changes and JJB, and its tenant(s), shall be jointly and severally liable for paying for the cost of such removal.

16. **ASSIGNMENT AND SUBLETTING:** City and JJB agree that the permission to encroach granted hereby is for the benefit of JJB and its tenant(s), and may not be assigned by JJB without written approval from Norfolk's City Manager. Further, upon JJB's lease of the premises (adjoining the Encroachment Area) to a tenant, JJB shall have any such tenant execute a copy of this Agreement, acknowledging acceptance of the terms and conditions set forth herein.

17. **SURRENDER:** JJB, and its tenant(s), will surrender possession of the Encroachment Area to City and remove all goods and chattels and other personal property therefrom upon termination of the permission granted hereby. JJB, and its tenant(s), shall return the Encroachment Area to the City in as good order and condition as it was at the beginning of JJB's use of the Encroachment Area. If JJB, and its tenant(s), have been requested to remove and fail to remove all items from the Encroachment Area upon termination hereof, City is authorized to remove and dispose of any such personal property and JJB, and its tenant(s), shall be jointly and severally liable to City for the cost of any removal and disposal.

18. **INSURANCE:** JJB, and/or its tenant(s), shall maintain in full force and effect Commercial General Liability ("CGL") insurance with a combined single limit policy of bodily injury, death and property damage insurance of One Million and 0/100 Dollars ($1,000,000) per occurrence and Two Million and 0/100 Dollars ($2,000,000) general aggregate insuring against all liability arising out of the use, occupancy, or maintenance of the Encroachment Area and appurtenant areas. CGL insurance shall be written on an approved ISO form for coverage in the

Commonwealth of Virginia, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, and liability assumed under insured contract. The City, its officers, employees, agents and representatives shall be named as additional insured on any such policy. Coverage shall be evidenced by a Certificate of Insurance provided to the City within thirty (30) days after adoption of this Agreement. All insurance policies and certificates shall provide for thirty (30) days advance notice in writing to City if the insurance is cancelled or modified. JJB, and its tenant(s), shall inform the City Attorney and the Department of General Services within 15 days of receiving such notice or cancellation, and immediately obtain coverage compliant with this agreement.

Further, JJB, and its tenant(s), shall maintain the applicable statutory Workers' Compensation Insurance, and Employer's Liability Insurance with a limit of at least $500,000 per accident/disease, and policy limit of $500,000 covering any of JJB's employees, its tenant's employees, whose work occurs within the premises which are subject to this agreement.

19. **INDEMNIFICATION**: JJB, and its tenant(s), shall indemnify and save harmless City from all fines, penalties, costs, suits, proceedings, liabilities, damages, claims and actions of any kind arising out of the use and occupation of the Premises by reason of any breach or nonperformance of any covenant or condition of this Agreement by JJB, or its tenant(s), or by JJB's, or its tenant(s)', intentional act or negligence, and not caused in whole or in part by City. This indemnification shall extend to all claims of any person or party for death or injury to persons and damage to any property, and to legal expenses, including reasonable attorney's fees, incurred by City in the defense of such claims or incurred by City as a result of a breach of any provision of this Agreement by JJB, and/or its tenant(s), but does not extend to circumstances caused in whole or in part by City.

20. **FIXTURES:** City covenants and agrees that no part of the improvements constructed, erected or placed by JJB, or its tenant(s), in the Encroachment Area shall be or become, or be considered as being, affixed to or a part of the right of way, and any and all provisions and principles of law to the contrary notwithstanding, it being the specific intention of City and JJB, and its tenant(s), to covenant and agree that all improvements of every kind and nature constructed, erected or placed by JJB, and/or its tenant(s), in the Encroachment Area shall be and remain the property of JJB, and/or its tenant(s), unless such improvements are not removed upon termination of this Agreement.

21. **ENVIRONEMENTAL:**

(a) For purposes of this section:

(i) "Hazardous Substances" include any pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials or hazardous substances as defined in or pursuant to the Resource and Conservation Recovery Act (42 U.S.C. SS6901 et seq.) (IIRCRAII), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. SS9601 et seq.) (CERCLAII) or any other federal, state, or local environmental law, ordinance, rule or regulation.

(ii) "Release" means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, disposing, or dumping.

(iii) "Notice" means any summons, citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, actual or threatened, from any authority of the Commonwealth of Virginia, the United States Environmental Protection Agency (USEPAII) or other federal, state or local agency or authority, or any other entity or any individual, concerning any intentional act or omission resulting or which may result in the Release of Hazardous Substances into the waters or onto the lands of the

Commonwealth of Virginia, or into waters outside the jurisdiction of the Commonwealth of Virginia or into the "environment," as such terms are defined in CERCLA. "Notice" shall include the imposition of any lien on any real property, personal property or revenues of the JJB, and/or its tenant(s), including but not limited to the JJB's, or its tenant(s)', interest in the Encroachment Area or any of JJB's, and/or its tenant(s), property located thereon, or any violation of federal, state or local environmental laws, ordinances, rules, regulations, governmental actions, orders or permits, or any knowledge, after due inquiry and investigation, or any facts which could give rise to any of the above.

(b) To the extent that JJB, and its tenant(s), may be permitted under applicable law to use the Encroachment Area for the generating, manufacture, refining, transporting, treatment, storage, handling, disposal, transfer or processing of Hazardous Substances, solid wastes or other dangerous or toxic substances, JJB, and its tenant(s), shall insure that said use shall be conducted at all times strictly in accordance with applicable statutes, ordinances and governmental rules and regulations. JJB, or its tenant(s), shall not cause or permit, because of any intentional or unintentional act or omission, a Release of Hazardous Substances in the Encroachment Area. If any such intentional or unintentional act or omission causes a Release of Hazardous Substance in the Encroachment Area, JJB, and its tenant(s), shall promptly clean up and remediate such Release in accordance with the applicable federal, state and local regulations and to the reasonable satisfaction of City.

(c) JJB, and its tenant(s), shall comply with all applicable federal, state, and local environmental laws, ordinances, rules and regulations, and shall obtain and comply with all permits required thereunder, any successor, or new environmental laws. Upon the receipt of any Notice, JJB, and its tenant(s), shall notify City promptly in writing, detailing all relevant facts and circumstances relating to the Notice.

(d) The requirements of this Section 21 shall apply to any successor in interest to JJB, and/or its tenant(s), whether due to merger, sale of assets or other business combination or change of control.

(e) JJB, and its tenant(s), hereby agrees to defend (with counsel satisfactory to City) and indemnify and hold City harmless from and against any and all claims, losses, liabilities, damages and expenses (including, without limitation, reasonable cleanup costs and attorney's fees arising under this indemnity) which may arise directly or indirectly from any use or Release of Hazardous Substances in the Encroachment Area and losses and claims against City resulting from JJB's, and/or its tenant(s), failure to comply strictly with the provisions of this Section 21. The provisions of this Section 21 shall survive the termination of this permission granted by this Agreement.

22. **LIENS OR ENCUMBRANCES :** If because of any act or omission of JJB, and/or its tenant(s), any mechanic's lien or other lien, charge or order for the payment of money shall be filed against any portion of the Encroachment Area, JJB, and its tenant(s), shall, at its own cost and expense, cause the same to be discharged of record or bonded within ninety (90) days after written notice from the City to JJB, and/or its tenant(s), of the filing thereof, and JJB, and/or its tenant(s), shall have the right to contest the validity of such lien if they so choose.

23. **APPLICABLE LAW:** The permission granted by this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Any suit or legal proceeding relating to permission granted hereby shall be brought only in the state or federal courts located in the Eastern District of Virginia.

24. **WAIVER OF TRIAL BY JURY:** To the extent permitted by law, City and JJB, and its tenant(s), mutually waive their rights to trial by jury in any action, proceeding, or

counterclaim brought by either party against the other with respect to any dispute or claim arising out of the permission to encroach granted to JJB, and its tenant(s), by this agreement.

25. **OTHER REQUIREMENTS:**

(a) JJB, and its tenant(s), shall comply with the City of Norfolk's Downtown Outdoor Dining Policy.

(b) JJB, and its tenant(s), shall comply with all requirements of the City of Norfolk Department of Public Health with respect to the use of the Encroachment Area.

(c) The use of the Encroachment Area shall be subject to the jurisdiction and review of the City of Norfolk's Design Review Committee.

(d) JJB's, and its tenant(s)', use of the Encroachment Area shall not interfere with any water meters or sewer cleanouts.

(e) A trashcan compatible in design and style with the table and chairs will be provided for the outdoor dining, and trash shall be removed daily.

(f) Tables and chairs will be arranged according to plan approved by Norfolk's Design Review Committee.

26. **TITLES AND HEADINGS**: Titles and headings are inserted in this Agreement for reference purposes only, and shall not be used to interpret the Agreement.

27. **SEVERABILITY**: Each provision of this Agreement must be interpreted in a way that is valid under applicable law. In the event that any provision or portion of this Agreement is determined by a court of competent jurisdiction to be void, invalid, or otherwise unenforceable, such provision or portion shall be deemed reformed, insofar as is possible, to cure the defect and give maximum effect to the intent of the City and JJB, and its tenant(s), entering into this Agreement, and in any event the remainder of the Agreement shall continue in full force and effect.

28. **ENTIRE UNDERSTANDING**: This Agreement constitutes the entire understanding between or on behalf of the City and JJB, and its tenant(s), and supersedes any prior understandings and/or written or oral agreements between them or on their behalf respecting the subject matter herein. There are no representations, agreements, arrangements, or understandings, oral or written, between and among the parties hereto relating to the subject matter of this Agreement, which are not fully expressed herein.

This Agreement may be modified or amended only by a writing signed and dated by both parties. All amendments shall be incorporated and made a part of this Agreement, and attached hereto.

29. **SUCCESSORS AND ASSIGNS**: All rights hereunder shall inure to the benefit of and all obligations hereunder shall be binding upon successors, assigns, subsidiaries, subrogees, parents, agents, employees, attorneys, accounts, legal representatives, directors, shareholders, heirs, and executors or administrators of each of the parties to this Agreement.

30. **COMPLIANCE WITH FEDERAL IMMIGRATION LAW:** At all times during which any term of this Agreement is in effect, JJB, and its tenant(s), do not and shall not knowingly employ any unauthorized alien. For purposes of this section, an "unauthorized alien" shall mean any alien who is neither lawfully admitted for permanent residence in the United States nor authorized to be employed either by Title 8, Section 1324a of the United states Code or the U. S. Attorney General.

31. **AUTHORITY TO EXECUTE:** The terms of this Agreement are contractual and not mere recital, and the individuals executing this Agreement hereby represent and warrant that they have full and complete authority to covenant and agree as herein provided and to execute this Agreement on behalf of the Parties hereto.

32. **AUTHORIZATION TO TRANSACT BUSINESS IN THE COMMONWEALTH:** JJB, and its tenant(s), hereby represent that they are organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership and is authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

33. **COUNTERPARTS**: The Agreement may be signed in counterparts. The Parties hereto agree that facsimile or email signatures shall have the full force and effect of original signatures.

IN WITNESS WHEREOF, the parties hereto have executed or have caused this Encroachment Agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

(SIGNATURE PAGES FOLLOW)

CITY OF NORFOLK

By:_____
City Manager

Attest:

_____
City Clerk

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City of Norfolk, in the State of Virginia, whose term of office expires on the _____ day of _____, 20__, do hereby certify that Marcus D. Jones, City Manager, and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing Deed of Easement, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this ___ day of _____, 2016.

_____
Notary Public
Registration: _____

Approved as to Contents:

_____
Director of General Services

Approved as to Form and Correctness

_____
Deputy City Attorney

JJB FINANCIAL, LLC

By:_____
Title:_____

COMMONWEALTH OF VIRGINIA
GRANTOR OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City of _____, in the Commonwealth of Virginia, do hereby certify that _____, _____(title) of JJB Financial, LLC whose name is signed to the foregoing Encroachment Agreement, has acknowledged the same before me in my City and State aforesaid. He/She is personally known to me or has produced a driver's license as identification.

Given under my hand this ____day of _____, 2016.

_____
Notary Public
Registration: _____

Tenant Endorsement and Acceptance:

Tenant: _____

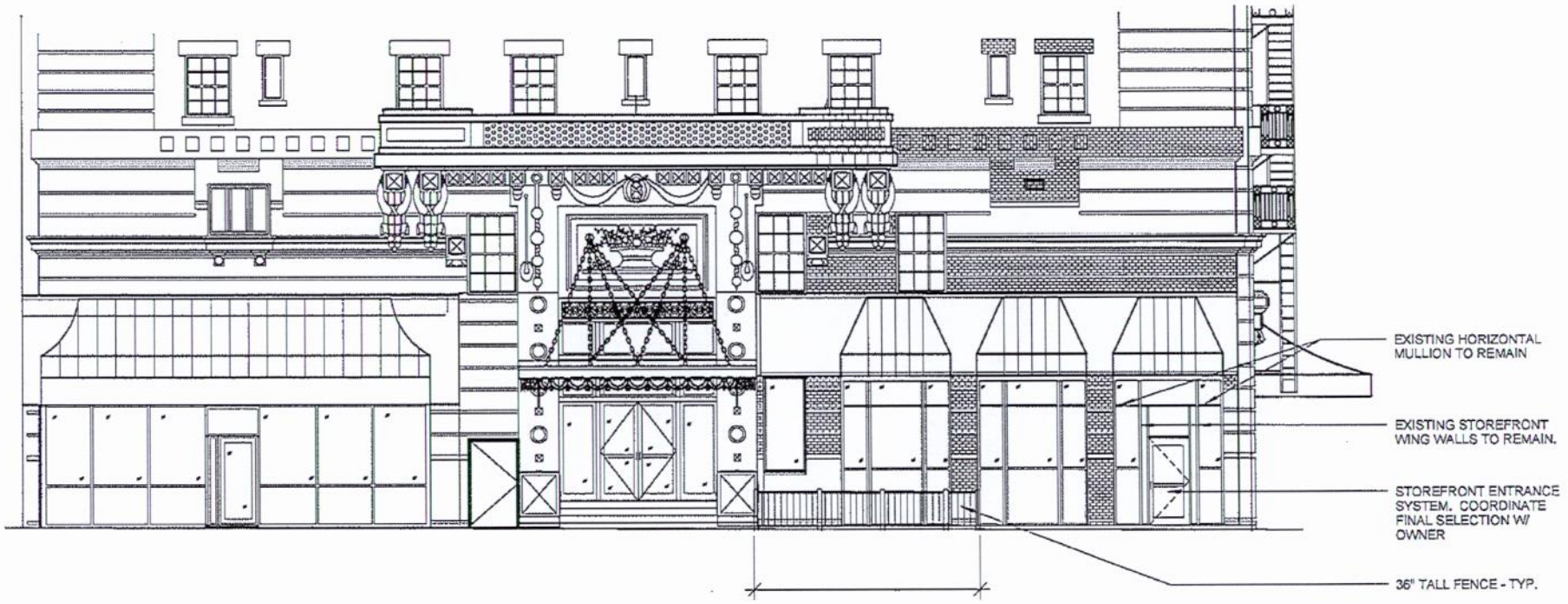
By:_____
Title:_____

COMMONWEALTH OF VIRGINIA
CITY OF _____, to-wit:

I, _____, a Notary Public in and for the City of _____, in the Commonwealth of Virginia, do hereby certify that _____, _____(title) of _____ whose name is signed to the foregoing Encroachment Agreement, has acknowledged the same before me in my City and State aforesaid. He/She is personally known to me or has produced a driver's license as identification.

Given under my hand this ____day of _____, 2016.

_____
Notary Public
Registration: _____



1 GROUND FLOOR GRANBY STREET ELEVATION
1/8" = 1'-0"

EXHIBIT A TO AGREEMENT

RETNAUER BAYNES ASSOCIATES, LLC.
R B A

MARATHON DEVELOPMENT GROUP

345 GRANBY STREET

No.	Description	Date

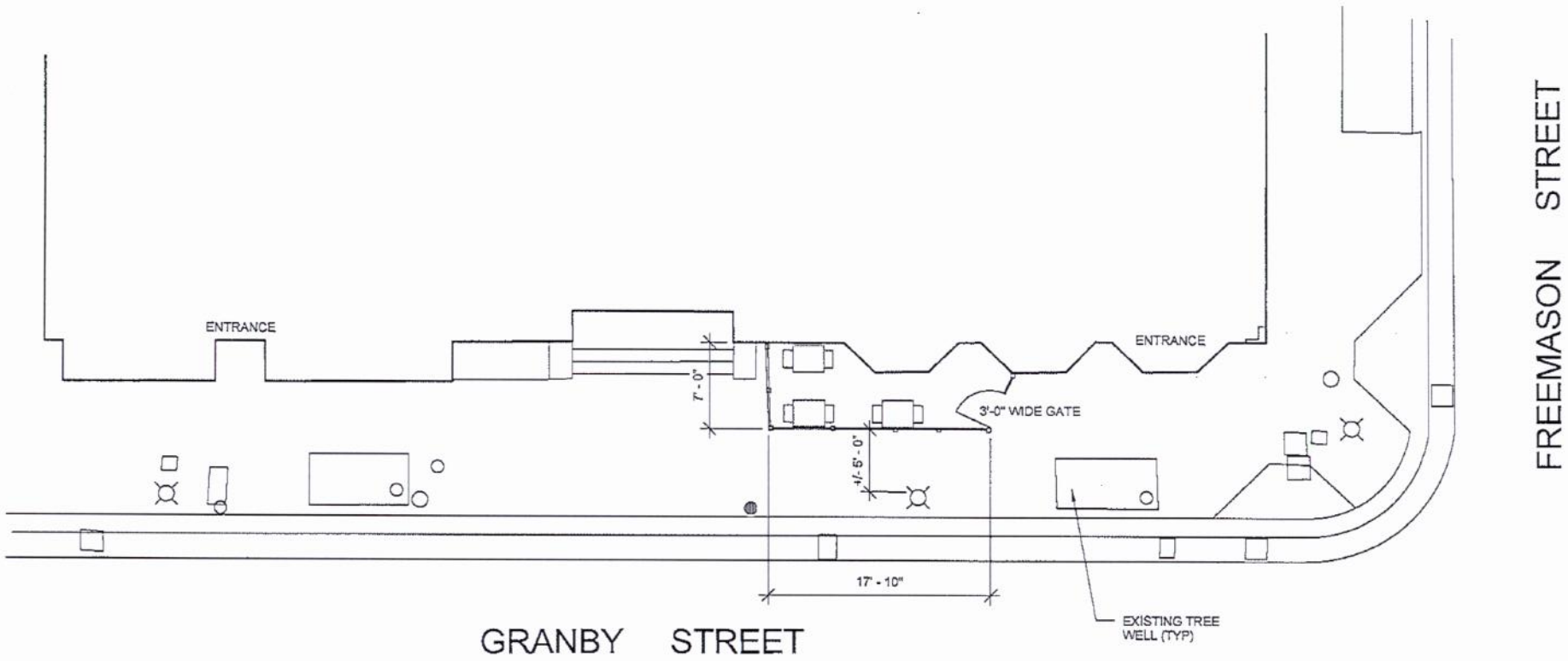
GROUND FLOOR ELEVATION

Project number	14051
Date	12/02/2014
Drawn by	Author
Checked by	Checker

SKA-004

Scale 1/8" = 1'-0"

12/2/2014 11:16:15 AM



1 345 GRANBY STREET PARTIAL GROUND FLOOR PLAN
1/8" = 1'-0"

RETNAUER BAYNES ASSOCIATES, LLC.

MARATHON DEVELOPMENT GROUP

345 GRANBY STREET

No.	Description	Date

345 GRANBY STREET OUTDOOR SEATING

Project number	14051
Date	12/02/2014
Drawn by	Author
Checked by	Checker

SKA-005

Scale 1/8" = 1'-0"

12/2/2014 11:19:31 AM

C: Dir., Department of General Services

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

April 26, 2016

From: David S. Freeman, AICP
Director of General Services

Subject: Encroachment Agreement with Michael, LLC for Outdoor Dining at 1231 W. Olney Road

Reviewed: Sabrina Joy-Hogg
Sabrina Joy-Hogg, Deputy City Manager

Ward/Superward: 2/6

Approved: Marcus D. Jones
Marcus D. Jones, City Manager

Item Number: **R-3**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Michael, LLC
1231 W. Olney Road
Norfolk, VA

III. **Description:**
This agenda item is an ordinance to permit Michael, LLC ("Michael") to encroach into the City of Norfolk's (the "city's") right-of-way at 1231 W. Olney Road with an area measuring approximately 162 square feet for use as an outdoor dining area and for no other purpose.

IV. **Analysis**
This encroachment will permit Michael to continue to utilize this area for their establishment's seating options for outdoor dining in addition to their indoor seating. The term of the encroachment is no longer than five (5) years, commencing on February 1, 2016, or the date of any authorizing ordinance, and terminating on January 31, 2021. The permission granted for this encroachment is subject to the right of revocation by the Norfolk City Council.

V. **Financial Impact**

Encroachment Fee (Michael, LLC)	Annual Rent: $972 (to be paid monthly: $81 per month)
Liability insurance for Michael, LLC (to be provided by the tenant)	The City has been named as an additional insured in the amount of $1,000,000 per occurrence; therefore, there should be no financial risk to the City

810 Union Street #1101 ▪ Norfolk, Virginia 23510
Phone: 757-664-4242 ▪ Fax: 757-664-4239

VI. Environmental

There are no known environmental issues associated with this property.

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the city's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of General Services – Office of Real Estate and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Proposed Encroachment Agreement

1/21/2016 - wld

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT. General Services

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE GRANTING MICHAEL, LLC PERMISSION TO ENCROACH INTO THE RIGHT OF WAY AT 1231 W. OLNEY ROAD APPROXIMATELY 162 SQUARE FEET FOR THE PURPOSE OF OUTDOOR DINING AND APPROVING THE TERMS AND CONDITIONS OF THE ENCROACHMENT AGREEMENT.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the terms and conditions of the Encroachment Agreement between the City of Norfolk and Michael, LLC ("Michael"), a copy of which is attached hereto as Exhibit A, are hereby approved, and in accordance therewith, permission is hereby granted to Michael to encroach into the right of way at 1231 W. Olney Road approximately 162 square feet for the purpose of outdoor dining and for no other purpose.

Section 2:- That the City Manager and other proper officers of the City are hereby authorized to execute the Encroachment Agreement and do all things necessary for its implementation.

Section 3:- That the City Manager is further authorized to correct, amend or revise the Encroachment Agreement as he may deem advisable consistent with the intent of the Council as expressed therein.

Section 4:- That this ordinance shall be in effect from and after its adoption.

EXHIBIT A TO ORDINANCE

ENCROACHMENT AGREEMENT

This **ENCROACHMENT AGREEMENT** ("Agreement") is made and entered into this ___ day of _____, 2016, by and between the **CITY OF NORFOLK, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia ("City"), and **MICHAEL, LLC,** a limited liability company ("Michael"), whose address is 4125 Portsmouth Boulevard, Portsmouth, Virginia 23701.

WITNESSETH:

1. **ENCROACHMENT AREA:** City hereby grants permission to Michael to encroach into the right of way at 1231 W. Olney Road approximately 162 +/- square feet, as shown on Exhibit A attached hereto ("Encroachment Area"), for the purpose of outdoor dining and for no other purpose.

2. **USE:** Michael, and its tenant(s), shall be permitted to occupy the Encroachment Area for outdoor dining purposes in conjunction with the operation of a dining establishment.

3. **TERM; TERMINATION:** The term of the permission to encroach granted hereby shall be no longer than five (5) years and shall commence on February 1, 2016, or upon the effective date of any authorizing ordinance, whichever shall last occur, and shall terminate on January 31, 2021. However, it is expressly understood that the permission granted herein is subject to the right of revocation by the Norfolk City Council, and that in the event of such revocation, Michael, and its tenant(s), if requested by City, shall remove the encroaching structures and shall cease using the Encroachment Area.

4. **COMPENSATION:** As compensation for the privilege of encroaching into the right of way, Michael shall pay City an annual encroachment fee in the amount of **Nine Hundred Seventy-Two and 0/100 Dollars ($972.00)**, to be paid in monthly installments of **Eighty-One and 0/100 Dollars ($81.00)**, beginning on the first day of February, 2016 or the day the ordinance

is effective, whichever is later. The encroachment fee shall be paid by check payable to the "Norfolk City Treasurer" and sent to the Department of General Services, 232 E. Main Street, Suite 250, Norfolk, VA 23510, and Attn: Mr. Jim Resolute.

5. **LATE FEES:** For any late payments received 5 days after the first of each month, Michael shall pay a late fee of five percent (5%) of the amount not paid when due.

6. **UTILITIES:** City shall not be responsible for utilities of any type used within the Encroachment Area. Michael shall pay all utility meter and utility services charges for all utilities, including but not limited to, gas, electricity, water, telephone, sewer, and any other necessary to serve the Encroachment Area.

7. **REPAIRS:** Michael, and its tenant(s), shall keep and maintain the Encroachment Area in good and complete state of repair and condition. Michael, and its tenant(s) shall make all repairs and replacements of every kind to the sidewalks and paved areas of the Encroachment Area in order to preserve and maintain the condition of the Encroachment Area. All such repairs and maintenance shall be performed in a good and competent manner, be at least equal in quality and usefulness to the original components, and not diminish the overall value of the Encroachment Area.

8. **REQUIREMENTS OF PUBLIC LAWS:** Michael, and its tenant(s), shall suffer no waste or injury to the Encroachment Area and shall comply with all federal, state, and municipal laws, ordinances and regulations applicable to the structure, use, and occupancy of the Encroachment Area. In addition, Michael, and its tenants(s), shall effect the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the Encroachment Area.

9. **RIGHT TO ENTER AND CURE:** City shall retain the right to enter upon the Encroachment Area at any time for the purpose of inspecting the Encroachment Area, ascertaining

compliance with this Agreement, and making any repairs, which City deems necessary because of any failure of Michael, or its tenant(s), to meet their obligations under this Agreement. The cost of any such repairs shall be deemed additional compensation payable to the City on demand. Any entry upon the Encroachment Area for cure and repair shall be accomplished by City at reasonable times and in the exercise of reasonable discretion by the City. The making of any repairs by City shall not constitute a waiver by City of any right or remedy upon Michael's, and/or its tenant(s), default in making repairs.

10. **NOTICE:** Any notice shall be in writing and shall be delivered by hand or sent by United States Registered or Certified Mail, postage prepaid, addressed as follows:

City: Department of General Services
Attn: Mr. Jim Resolute
232 E. Main Street, Suite 250
Norfolk, Virginia 23510

Michael: Michael, LLC
Attn: Mr. Shahpor Mahgerefteh
4125 Portsmouth Boulevard
Portsmouth, Virginia 23701

With copies to: City Attorney
900 City Hall Building
810 Union Street
Norfolk, Virginia 23510

Either party hereto may change its address to which said notice shall be delivered or mailed by giving notice of such change as provided above. Notice shall be deemed given when delivered (if delivered by hand) or when postmarked (if sent properly by mail).

11. **ENVIRONMENTAL MATTERS:** Michael, and its tenant(s), agree that they will not introduce onto the Encroachment Area any toxic, hazardous, or dangerous materials unless such material is stored, safeguarded, or used in accordance with applicable laws and regulations. Michael, and its tenant(s), will not allow any air, water, or noise pollution to occur in the

Encroachment Area. Michael, and its tenant(s), hereby agree to use and occupy the Encroachment Area in a safe and reasonable manner and in accordance with applicable law.

City in turn agrees that Michael, and its tenant(s), shall not be responsible or assume liability for environmental conditions existing on or about the Encroachment Area prior to occupancy by Michael thereof.

12. **DESTRUCTION:** If the encroaching structures or any part thereof shall be damaged or destroyed by fire, lightning, vandalism, or by any other casualty or cause, the permission granted hereby shall be automatically terminated unless the parties agree, in writing, to continue to permit the encroachments granted by this Agreement.

13. **NON-LIABILITY OF CITY:** City shall not be liable for any damage or injury which may be sustained by Michael, its tenant(s), or any other person as a consequence of the failure, breakage, leakage or obstruction of the water, plumbing, steam, gas, sewer, waste or spoil pipes, roof, drains, leaders, gutters, valleys, downspouts or the like, or of the electrical, ventilation, air conditioning, gas, power, conveyor, refrigeration, sprinkler, hearing or other systems, elevators or hoisting equipment, if any, upon the Encroachment Area, or by reason of the elements; or resulting from acts, conduct or omissions on the part of Michael, its tenant(s), or their agents, employees, guests, licensees, invitees, assignees or successors, or on the part of any other person or entity.

14. **REMOVAL OF SNOW:** Michael, and its tenant(s), agree to remove or cause to be removed, as the need for the same arises, snow and ice from the Encroachment Area.

15. **ALTERATIONS:** Michael, and its tenant(s), covenant and agree that they will not make any improvements, changes, installations, renovations, additions, or alterations in and about the Encroachment Area without the prior written consent of the City other than the approval given by Norfolk's Design Review Committee and Norfolk's Planning Commission. If Michael, and/or

its tenants, install or make any improvements, additions, installations, renovations, changes on or to the Encroachment Area with the approval of City, Michael, and its tenant(s), hereby agree to remove, if requested by City, any improvements, additions, installations, and renovations, changes on or to the Encroachment Area upon termination of this Agreement. In the event Michael, and/or its tenant(s), fail to remove the improvements, additions, installations, renovations, and changes on or to the Encroachment Area when requested to do so by City, then the City may remove the improvements, additions, installations, renovations, changes and Michael, and its tenant(s), shall be jointly and severally liable for paying for the cost of such removal.

16. **ASSIGNMENT AND SUBLETTING:** City and Michael agree that the permission to encroach granted hereby is for the benefit of Michael and its tenant(s), and may not be assigned by Michael without written approval from Norfolk's City Manager. Further, upon Michael's lease of the premises (adjoining the Encroachment Area) to a tenant, Michael shall have any such tenant execute a copy of this Agreement, acknowledging acceptance of the terms and conditions set forth herein.

17. **SURRENDER:** Michael, and its tenant(s), will surrender possession of the Encroachment Area to City and remove all goods and chattels and other personal property therefrom upon termination of the permission granted hereby. Michael, and its tenant(s), shall return the Encroachment Area to the City in as good order and condition as it was at the beginning of Michael's use of the Encroachment Area. If Michael, and its tenant(s), have been requested to remove and fail to remove all items from the Encroachment Area upon termination hereof, City is authorized to remove and dispose of any such personal property and Michael, and its tenant(s), shall be jointly and severally liable to City for the cost of any removal and disposal.

18. **INSURANCE:** Michael, and its tenant(s), shall maintain in full force and effect Commercial General Liability ("CGL") insurance with a combined single limit policy of bodily

injury, death and property damage insurance of One Million and 0/100 Dollars ($1,000,000) per occurrence and Two Million and 0/100 Dollars ($2,000,000) general aggregate insuring against all liability arising out of the use, occupancy, or maintenance of the Encroachment Area and appurtenant areas. CGL insurance shall be written on an approved ISO form for coverage in the Commonwealth of Virginia, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, and liability assumed under insured contract. The City, its officers, employees, agents and representatives shall be named as additional insured on any such policy. Coverage shall be evidenced by a Certificate of Insurance provided to the City within thirty (30) days after adoption of this Agreement. All insurance policies and certificates shall provide for thirty (30) days advance notice in writing to the City, as the additional insured, if the insurance is cancelled or modified. Michael, and its tenant(s), shall inform the City Attorney and the Department of General Services within 15 days of receiving such notice or cancellation, and immediately obtain coverage compliant with this agreement.

Michael, and its tenant(s), shall maintain the applicable statutory Workers' Compensation Insurance, and Employer's Liability Insurance with a limit of at least $500,000 per accident/disease, and policy limit of $500,000 covering any of Michael's employees, and its tenant's employees, whose work occurs within the premises which are subject to this agreement.

19. **INDEMNIFICATION**: Michael, and its tenant(s), shall indemnify and save harmless City from all fines, penalties, costs, suits, proceedings, liabilities, damages, claims and actions of any kind arising out of the use and occupation of the Premises by reason of any breach or nonperformance of any covenant or condition of this Agreement by Michael, or its tenant(s), or by Michael's, or its tenant(s)', intentional act or negligence, and not caused in whole or in part by City. This indemnification shall extend to all claims of any person or party for death or injury to persons and damage to any property, and to legal expenses, including reasonable attorney's fees,

incurred by City in the defense of such claims or incurred by City as a result of a breach of any provision of this Agreement by Michael, or its tenant(s), but does not extend to circumstances caused in whole or in part by City.

20. **FIXTURES:** City covenants and agrees that no part of the improvements constructed, erected or placed by Michael, or its tenant(s), in the Encroachment Area shall be or become, or be considered as being, affixed to or a part of the right of way, and any and all provisions and principles of law to the contrary notwithstanding, it being the specific intention of City, Michael, and its tenant(s), to covenant and agree that all improvements of every kind and nature constructed, erected or placed by Michael, and/or its tenant(s), in the Encroachment Area shall be and remain the property of Michael, and/or its tenant(s), unless such improvements are not removed upon termination of this Agreement.

21. **ENVIRONMENTAL:**

(a) For purposes of this section:

(i) "Hazardous Substances" include any pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials or hazardous substances as defined in or pursuant to the Resource and Conservation Recovery Act (42 U.S.C. SS6901 et seq.) (IIRCRAII), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. SS9601 et seq.) (CERCLAII) or any other federal, state, or local environmental law, ordinance, rule or regulation.

(ii) "Release" means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, disposing, or dumping.

(iii) "Notice" means any summons, citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, actual or threatened, from any authority of the Commonwealth of Virginia, the United States

Environmental Projection Agency (USEPAII) or other federal, state or local agency or authority, or any other entity or any individual, concerning any intentional act or omission resulting or which may result in the Release of Hazardous Substances into the waters or onto the lands of the Commonwealth of Virginia, or into waters outside the jurisdiction of the Commonwealth of Virginia or into the "environment," as such terms are defined in CERCLA. "Notice" shall include the imposition of any lien on any real property, personal property or revenues of Michael, and/or its tenant(s), including but not limited to Michael's, or its tenant(s)', interest in the Encroachment Area, the adjoining real property, or any of Michael's, and/or its tenant(s)', personal property located thereon, or any violation of federal, state or local environmental laws, ordinances, rules, regulations, governmental actions, orders or permits, or any knowledge, after due inquiry and investigation, or any facts which could give rise to any of the above.

(b) To the extent that Michael, and its tenant(s), may be permitted under applicable law to use the Encroachment Area for the generating, manufacture, refining, transporting, treatment, storage, handling, disposal, transfer or processing of Hazardous Substances, solid wastes or other dangerous or toxic substances, Michael, and its tenant(s), shall insure that said use shall be conducted at all times strictly in accordance with applicable statutes, ordinances and governmental rules and regulations. Michael, and its tenant(s), shall not cause or permit, because of any intentional or unintentional act or omission, a Release of Hazardous Substances in the Encroachment Area. If any such intentional or unintentional act or omission causes a Release of Hazardous Substance in the Encroachment Area, Michael, or its tenant(s), shall promptly clean up and remediate such Release in accordance with the applicable federal, state and local regulations and to the reasonable satisfaction of City.

(c) Michael, and its tenant(s), shall comply with all applicable federal, state, and local environmental laws, ordinances, rules and regulations, and shall obtain and comply with

all permits required thereunder, any successor, or new environmental laws. Upon the receipt of any Notice, Michael, and its tenant(s), shall notify City promptly in writing, detailing all relevant facts and circumstances relating to the Notice.

(d) The requirements of this Section 21 shall apply to any successor in interest to Michael, and its tenant(s), whether due to merger, sale of assets or other business combination or change of control.

(e) Michael, and its tenant(s), hereby agree to defend (with counsel satisfactory to City) and indemnify and hold City harmless from and against any and all claims, losses, liabilities, damages and expenses (including, without limitation, reasonable cleanup costs and attorney's fees arising under this indemnity) which may arise directly or indirectly from any use or Release of Hazardous Substances in the Encroachment Area and losses and claims against City resulting from Michael's, and/or its tenant(s), failure to comply strictly with the provisions of this Section 21. The provisions of this Section 21 shall survive the termination of this permission granted by this Agreement.

22. **LIENS OR ENCUMBRANCES:** If because of any act or omission of Michael, and/or its tenant(s), any mechanic's lien or other lien, charge or order for the payment of money shall be filed against any portion of the Encroachment Area, Michael, and its tenant(s), shall, at their own cost and expense, cause the same to be discharged of record or bonded within ninety (90) days after written notice from the City to Michael, and/or its tenant(s), of the filing thereof, and Michael, and/or its tenant(s), shall have the right to contest the validity of such lien if they so choose.

23. **APPLICABLE LAW:** The permission granted by this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Any

suit or legal proceeding relating to permission granted hereby shall be brought only in the state or federal courts located in the Eastern District of Virginia.

24. **WAIVER OF TRIAL BY JURY:** To the extent permitted by law, City and Michael, and its tenant(s), mutually waive their right to trial by jury in any action, proceeding, or counterclaim brought by either party against the other with respect to any dispute or claim arising out of the permission to encroach granted to Michael, and its tenant(s), by this agreement.

25. **OTHER REQUIREMENTS:**

(a) Michael, and its tenant(s), shall comply with the City of Norfolk's Downtown Outdoor Dining Policy.

(b) Michael, and its tenant(s), shall comply with all requirements of the City of Norfolk Department of Public Health with respect to the use of the Encroachment Area.

(c) The use of the Encroachment Area shall be subject to the jurisdiction and review of the City of Norfolk's Design Review Committee.

(d) Michael's, and its tenant(s)', use of the Encroachment Area shall not interfere with any water meters or sewer cleanouts.

(e) A trashcan compatible in design and style with the table and chairs will be provided for the outdoor dining, and trash shall be removed daily.

(f) Tables and chairs will be arranged according to plan approved by Norfolk's Design Review Committee.

26. **TITLES AND HEADINGS**: Titles and headings are inserted in this Agreement for reference purposes only, and shall not be used to interpret the Agreement.

27. **SEVERABILITY**: Each provision of this Agreement must be interpreted in a way that is valid under applicable law. In the event that any provision or portion of this Agreement is determined by a court of competent jurisdiction to be void, invalid, or otherwise unenforceable,

such provision or portion shall be deemed reformed, insofar as is possible, to cure the defect and give maximum effect to the intent of the City and Michael, and its tenant(s), entering into this Agreement, and in any event the remainder of the Agreement shall continue in full force and effect.

28. **ENTIRE UNDERSTANDING**: This Agreement constitutes the entire understanding between or on behalf of the City and Michael, and its tenant(s), and supersedes any prior understandings and/or written or oral agreements between them or on their behalf respecting the subject matter herein. There are no representations, agreements, arrangements, or understandings, oral or written, between and among the parties hereto relating to the subject matter of this Agreement, which are not fully expressed herein.

This Agreement may be modified or amended only by a writing signed and dated by both parties. All amendments shall be incorporated and made a part of this Agreement, and attached hereto.

29. **SUCCESSORS AND ASSIGNS**: All rights hereunder shall inure to the benefit of and all obligations hereunder shall be binding upon successors, assigns, subsidiaries, subrogees, parents, agents, employees, attorneys, accounts, legal representatives, directors, shareholders, heirs, and executors or administrators of each of the parties to this Agreement.

30. **COMPLIANCE WITH FEDERAL IMMIGRATION LAW:** At all times during which any term of this Agreement is in effect, Michael, and its tenant(s), do not and shall not knowingly employ any unauthorized alien. For purposes of this section, an "unauthorized alien" shall mean any alien who is neither lawfully admitted for permanent residence in the United States nor authorized to be employed either by Title 8, Section 1324a of the United States Code or the U.S. Attorney General.

31. **AUTHORITY TO EXECUTE:** The terms of this Agreement are contractual and not mere recital, and the individuals executing this Agreement hereby represent and warrant that

they have full and complete authority to covenant and agree as herein provided and to execute this Agreement on behalf of the Parties hereto.

32. **AUTHORIZATION TO TRANSACT BUSINESS IN THE COMMONWEALTH:** Michael, and its tenant(s), hereby represents that it is organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership and is authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

33. **COUNTERPARTS**: The Agreement may be signed in counterparts. The Parties hereto agree that facsimile or email signatures shall have the full force and effect of original signatures.

IN WITNESS WHEREOF, the parties hereto have executed or have caused this Encroachment Agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

(SIGNATURE PAGES FOLLOW)

CITY OF NORFOLK

By:_____
City Manager

Attest:

_____
City Clerk

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City of Norfolk, in the State of Virginia, whose term of office expires on the _____ day of _____, 20__, do hereby certify that Marcus D. Jones, City Manager, and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing Encroachment Agreement, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this ___ day of _____, 2016.

_____
Notary Public
Registration: _____

Approved as to Contents:

_____
Director of General Services

Approved as to Form and Correctness

_____
Deputy City Attorney

MICHAEL, LLC

By:_____
Title:_____

COMMONWEALTH OF VIRGINIA
CITY OF _____, to-wit:

I, _____, a Notary Public in and for the City of _____, in the Commonwealth of Virginia, do hereby certify that _____, _____(title) of Michael, LLC whose name is signed to the foregoing Encroachment Agreement, has acknowledged the same before me in my City and State aforesaid. He/She is personally known to me or has produced a driver's license as identification.

Given under my hand this ____day of _____, 2016.

_____
Notary Public
Registration: _____

Tenant Endorsement and Acceptance:

Tenant: _____

By:_____
Title:_____

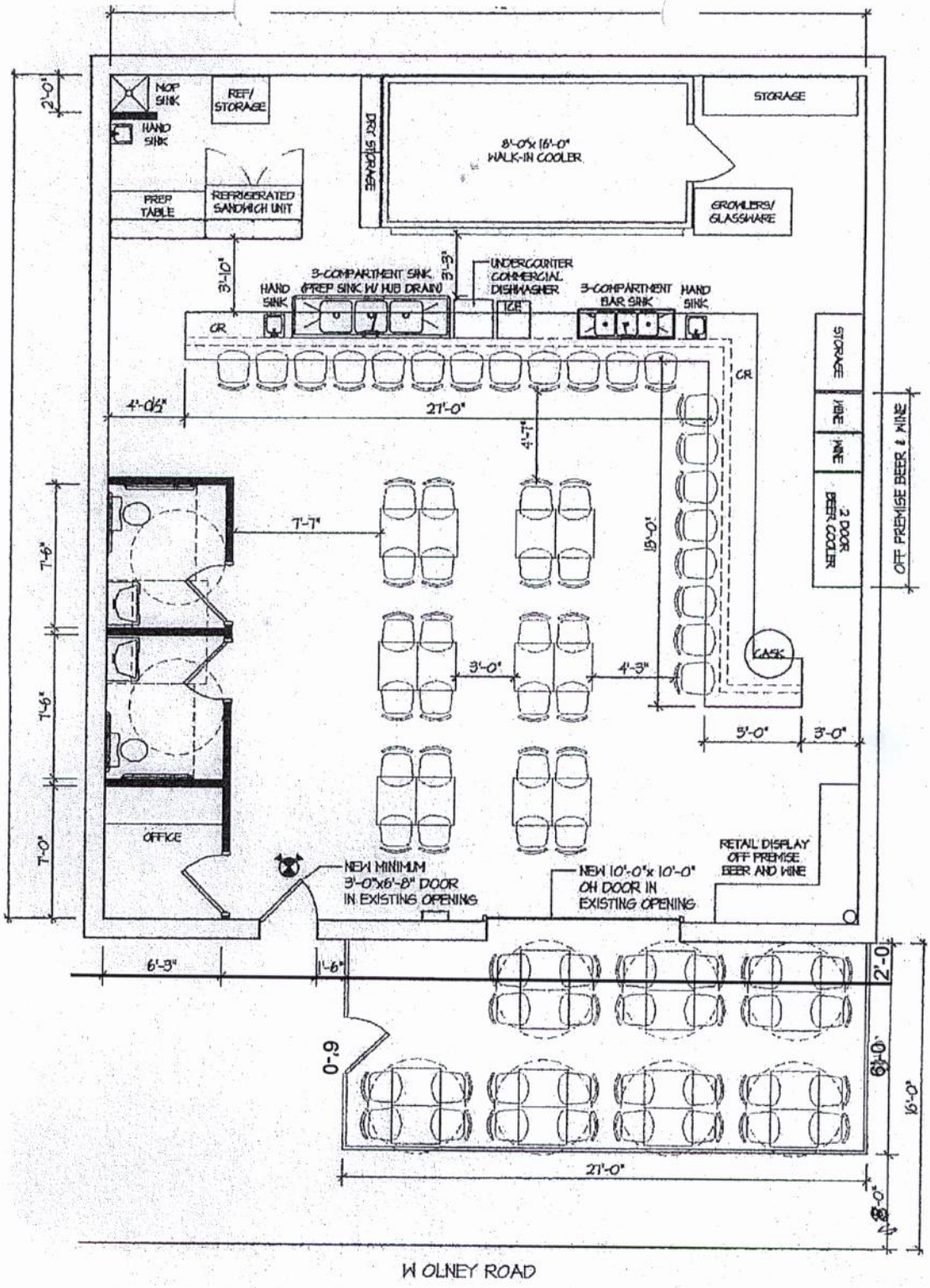
COMMONWEALTH OF VIRGINIA
CITY OF _____, to-wit:

I, _____, a Notary Public in and for the City of _____, in the Commonwealth of Virginia, do hereby certify that _____, _____(title) of _____ whose name is signed to the foregoing Encroachment Agreement, has acknowledged the same before me in my City and State aforesaid. He/She is personally known to me or has produced a driver's license as identification.

Given under my hand this ____day of _____, 2016.

_____
Notary Public
Registration: _____

EXHIBIT A TO AGREEMENT



THE BIRCH - 1231 W OLNEY ROAD

1/8" = 1'-0"

OCCUPANCY	
DINING SEATS:	24
BAR SEATS:	20
STAFF:	5
INDOOR TOTAL:	49
OUTDOOR DINING:	28
TOTAL OCCUPANCY:	77

C: Dir., Department of Public Works

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

April 26, 2016

From: David Ricks, Director of Public Works

Subject: Right of Entry Agreements for a Water Quality Retrofit Project at Lake Modoc

Reviewed: _____
Ronald H. Williams, Jr., Deputy City Manager

Ward/Superward: 5/6

Approved: _____
Marcus D. Jones, City Manager

Item Number: **R-4**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description:**
This agenda item is an ordinance to authorize the City Manager to enter into Right of Entry Agreements with the owners of certain parcels of property located around Lake Modoc for the purpose of a water quality retrofit project by the City of Norfolk.

IV. **Analysis**

- The retrofit to Lake Modoc is to increase the water quality treatment efficiency of the lake and to improve hydraulic conveyance capacity for larger storm events if possible in order to reduce stormwater pollution from entering the Chesapeake Bay.
- The retrofit project is a priority in the City's plan to meet the Virginia Department of Environmental Quality's requirements to reduce stormwater pollution entering the Chesapeake Bay.
- The work is proposed to impact the lake edge and the lake bottom, improving the overall functionality of the lake, as well as, aesthetics.
- Several privately owned parcels extend out into the lake and Right of Entry Agreements are recommended for the work to take place in those areas where the lake perimeter and private parcels overlap.

V. **Financial Impact**
No financial impact is anticipated as a result of this ordinance.

810 Union Street #1101 ▪ Norfolk, Virginia 23510
Phone: 757-664-4242 ▪ Fax: 757-664-4239

VI. Environmental

No impact to the environment is anticipated as a result of this ordinance.

VII. Community Outreach/Notification

Initial community outreach has taken place via a short informative presentation given to the Bayview Civic League on February 9, 2016. The overall reception of the project was extremely positive. Face-to-face meetings with the owners of the overlapping parcels by City stormwater staff, informing the residents of the project are currently underway. Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. Board/Commission Action

All plats will be filed with Circuit Court upon approval of this ordinance.

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of Public Works, the Department of City Planning and the City Attorney's Office.

Supporting Material from the Department of Public Works:

- Ordinance
- Exhibit A - Map

3/31/2016 - wld

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT. Public Works

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO RIGHT OF ENTRY AGREEMENTS WITH THE OWNERS OF CERTAIN PARCELS OF PROPERTY LOCATED AROUND LAKE MODOC FOR THE PURPOSE OF A WATER QUALITY RETROFIT PROJECT.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

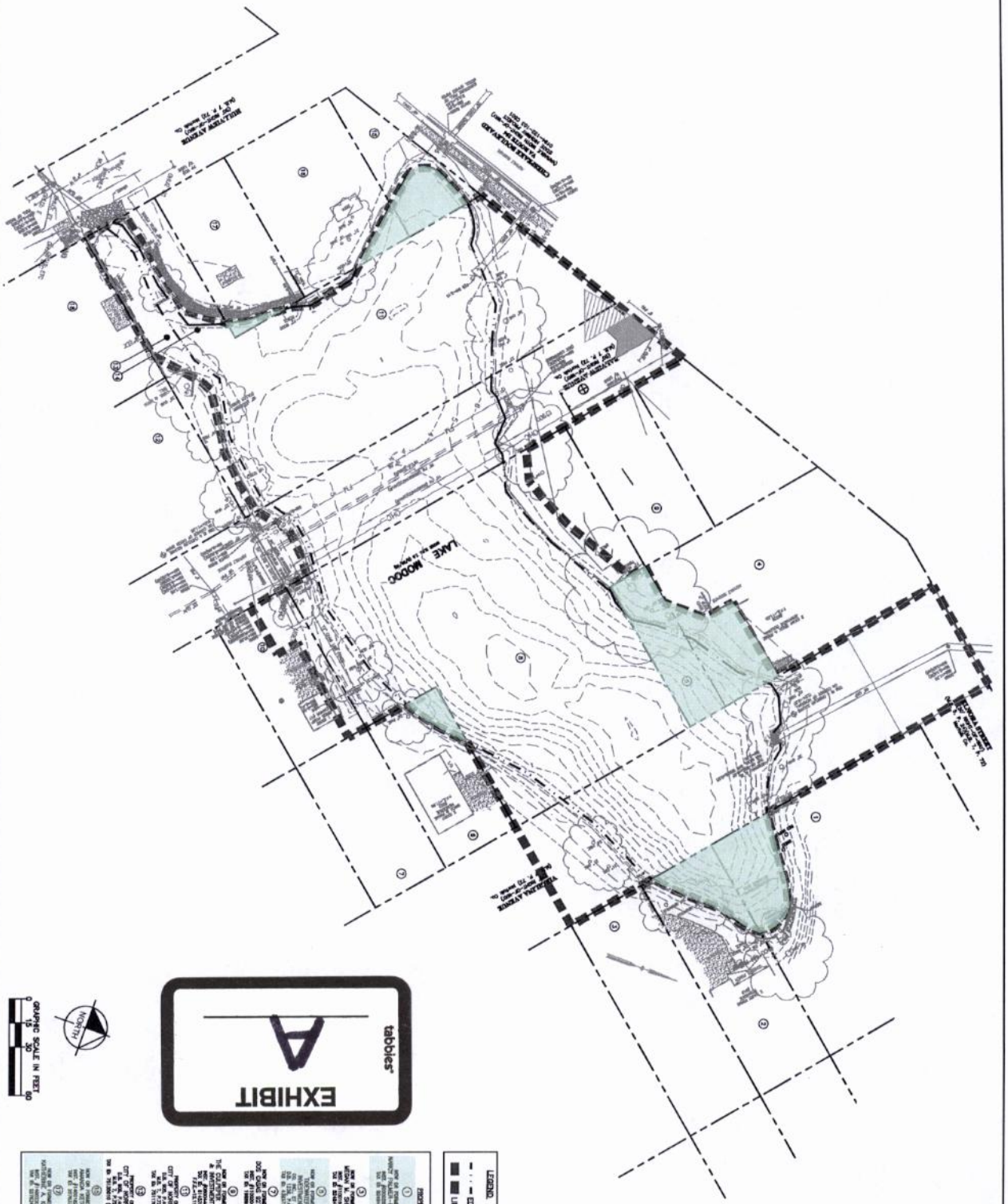
Section 1:- That the City Manager is hereby authorized to enter into right of entry agreements on behalf of the City of Norfolk with the owners of certain parcels of property located in the Lake Modoc area of the City of Norfolk, such parcels of property being designated in Exhibit A attached hereto, for the purpose of a water quality retrofit project.

Section 2:- That the said right of entry agreements shall contain such terms and conditions as the City Attorney shall deem satisfactory and in the best interests of the City.

Section 3:- That the City Manager is further authorized to correct, amend or revise the right of entry agreements as he may deem necessary in order to carry out the purposes stated herein.

Section 4:- That this ordinance shall be in effect from and after the date of its adoption.

Plotted By: Yenowine, Jennifer Sheet Set: Modoc Layout: LAYOUT February 04, 2016 05:15:21pm K:\VAB_ENV\116057090_Lake Modoc Retrofit\CADD\Exhibits\LIMITS OF DISTURBANCE.dwg
This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.



SHEET NUMBER 1	LAKE MODOC RETROFIT PREPARED FOR CITY OF NORFOLK NORFOLK VIRGINIA	LIMITS OF DISTURBANCE	KHA PROJECT 116057090 DATE 02/04/2016 SCALE AS SHOWN DESIGNED BY SDT DRAWN BY JLY CHECKED BY DMP	LICENSED PROFESSIONAL PRELIMINARY NOT FOR CONSTRUCTION DATE:	Kimley»Horn © 2015 KIMLEY-HORN AND ASSOCIATES, INC. 4500 MAIN STREET, SUITE 500, VIRGINIA BEACH, VA 23462 PHONE: 757-213-8500 FAX: 757-213-8601 WWW.KIMLEY-HORN.COM	No. REVISIONS DATE BY

C: Dir., Department of Libraries

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

April 26, 2016

From: David Sullivan, Executive Director, Slover Library

Subject: Approve the terms and conditions of a Safekeeping and Custody Agreement with Virginia Cartographical Society, LC

Reviewed: _____
Wynter C. Benda, Deputy City Manager

Ward/Superward: 4/7

Approved: _____
Marcus D. Jones, City Manager

Item Number: **R-5**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description:**
This agenda item is an ordinance to approve the terms and conditions of a Safekeeping and Custody Agreement (the "agreement") between the City of Norfolk (the "city") and Virginia Cartographical Society, LC ("VCS").

IV. **Analysis**
VCS is the owner of a collection of historical maps, atlases, books and pamphlets dating from the late 1500's through the American Civil War (the "Collection"). VCS intends to store and safekeep the Collection at Slover Library until a permanent home can be found. Slover Library is a leading candidate for that role. The city will accept custody and responsibility for the storage and safekeeping of the Collection, subject to the terms and conditions of the agreement, for a period of two (2) years.

V. **Financial Impact**
VCS will pay for relocation costs and will insure the Collection for full replacement value. The city will be listed as an additional insured on VCS's insurance policy.

VI. **Environmental**
N/A

810 Union Street #1101 ▪ Norfolk, Virginia 23510
Phone: 757-664-4242 ▪ Fax: 757-664-4239

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the city's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of Libraries and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Safekeeping and Custody Agreement

3/29/2016mr

Form and Correctness Approved:

By _____
Office of the City Attorney

NORFOLK, VIRGINIA

Contents Approved:

By _____
Executive Director
Slover Library

ORDINANCE No.

AN ORDINANCE APPROVING THE TERMS AND CONDITIONS OF A SAFEKEEPING AND CUSTODY AGREEMENT BETWEEN THE CITY OF NORFOLK AND VIRGINIA CARTOGRAPHICAL SOCIETY, LC FOR THE CUSTODY OF A HISTORICAL MAP COLLECTION AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SAFEKEEPING AND CUSTODY AGREEMENT ON BEHALF OF THE CITY.

– – –

WHEREAS, the Virginia Cartographical Society, LC (the "Owner") owns the Woolridge Collection (the "Collection"), a historical collection of maps, dating from the late 1500s through the American Civil War and comprised of atlases, books and pamphlets; and

WHEREAS, the Owner desires to arrange for the storage and safekeeping of the Collection by the City at Slover Library; and

WHEREAS, the City is willing to accept custody and responsibility for the storage and safekeeping of the Collection at Slover Library on the terms and conditions set forth in the Safekeeping and Custody Agreement attached hereto; now, therefore

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Safekeeping and Custody Agreement between the City of Norfolk and Virginia Cartographical Society, LC, a copy of which is attached

hereto, wherein the City of Norfolk agrees to accept custody and responsibility for the storage and safekeeping of the Collection, is hereby approved.

Section 2:- That the City Manager is authorized to correct, amend, or revise the Safekeeping and Custody Agreement as he may deem necessary in order to carry out the intent of the Council and to execute the Safekeeping and Custody Agreement, as corrected, amended, or revised in accordance herewith, for and on behalf of the City, subject however to approval as to form and correctness by the Office of the City Attorney.

Section 3:- That this ordinance shall be in effect as of the date of its adoption.

SAFEKEEPING AND CUSTODY AGREEMENT

THIS AGREEMENT ("Agreement") made as of the _____ day of _____, 2016, between VIRGINIA CARTOGRAPHICAL SOCIETY, LC, a Virginia limited liability company ("Owner") and CITY OF NORFOLK ("City").

WHEREAS, Owner owns all of those approximately 334 items comprised of (a) atlases, (b) books and pamphlets containing maps, and (c) individual maps, all as listed on Exhibit A attached hereto and incorporated herein by reference and captioned "Maps In Inventory Order" (together the "Collection"), together with (i) any frames and/or other storage media which may accompany the Collection and (b) nine binders containing invoices/bills of sales documenting provenance and inventory sheets containing more particular descriptions of individual maps and notes on individual maps (together the "Ancillary Materials"); and

WHEREAS, Owner desires to arrange for the storage and safekeeping of the Collection and Ancillary Materials; and

WHEREAS, City is willing to accept custody and responsibility for the storage and safekeeping of the Collection and Ancillary Materials on the terms and conditions of this Agreement.

WITNESSETH:

NOW THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, the parties hereto do hereby agree as follows:

1. Custody. City will accept custody of the Collection and Ancillary Materials, and Owner will arrange for the packing and transport of the Collection and Ancillary Documents to City's main library at The Slover Library, Norfolk, Virginia (the "Library"). Concurrently with delivery, City will execute a receipt for the Collection and Ancillary Documents in the form of Exhibit B attached hereto and incorporated herein by reference. Owner will pay all costs associated with packing and transporting the Collection and Ancillary Materials to the Library.

2. Location. The Collection and Ancillary Materials will be located at all times at the Library and no item of the Collection or the Ancillary Materials will be located elsewhere without the prior written consent of Owner.

3. Care.

(a) City will use the same care in the care, storage and safekeeping of the Collection and Ancillary Materials that City exercises in the care, storage and safekeeping of rare objects of like kind, quality and condition held in the Sargeant Memorial Collection. Without limiting the generality of the foregoing, City specifically agrees to observe the following standards and procedures in the care, storage and safekeeping of the Collection and Ancillary Materials: City will (i) keep or cause to be kept each item in the Collection and all the Ancillary Materials in a secure, climate controlled location, readily identifiable and non-commingled with other items of a similar nature, (ii) not remove or allow to be removed, from any item in the

Collection, the existing short title labels corresponding to the list of items in Exhibit A, (iii) not expose or allow to be exposed to patrons viewing items in the Collection for single periods of over one (1) hour or for a sequence of periods aggregating over six (6) hours during a forty-eight (48) hour period, any item in the Collection to illumination at an intensity of greater than four foot-candles, and (iv) promptly inform Owner in writing of the location and of any change in the location of the Collection.

(b) City will not perform any conservation treatments unless approved in advance and in writing by Owner.

(c) Upon request of Owner, but not more frequently than annually, City will report to Owner (i) that it has reviewed the Collection visually and based on that review that all of the items of the Collection are still present and (ii) what City's records show has been the use of the Collection or any item in it. Should Owner desire to individually inspect each item of the Collection, City will assist Owner.

(d) Within five (5) days of discovery, City will report all instances of and circumstances surrounding loss, deterioration and damage to, or destruction of the Collection or any items thereof City will offer its recommendations as to the repairs and restoration to the Collection or any items thereof. Any actions, and the estimated costs thereof, that would involve repair and restoration of any of the Collection must be approved in advance and in writing by Owner.

(e) City will limit access to items in the Collection to individuals acting with City's express permission, in the presence and under the supervision of a librarian or archivist of the Library, and in accordance with the procedures described on Exhibit C.

Notwithstanding the foregoing, no access will be allowed to the Collection to persons outside Library's staff or third party conservationists approved by Owner until the parties mutually agree on further protocols to govern such access.

4. Conservation. City will not be expected to provide any conservation or stabilization and treatment to the Collection. City will be willing to provide those services subject to a separate written agreement with Owner.

5. Prohibition on Encumbrance/Transfer. City shall not mortgage, pledge, assign, transfer, exchange, give, sublet, discard or part with possession of any of the Collection in any manner to any third party, directly or indirectly, without the prior written permission of Owner.

6. Insurance. Owner will insure the Collection and Ancillary Materials for full replacement value, and City will not be responsible to insure the Collection or Ancillary Materials. Owner shall cause all such policies to name City as an additional insured on all such policies. All such insurance policies shall provide that none can be cancelled except on a 30-days' prior written notice to City, and that all such insurance policies shall contain a standard waiver of subrogation clause in favor of City. All such policies shall be paid and in force throughout the Term and any extensions thereof. Owner and City agree and acknowledge that the liability, if any, that the City may have with respect to any item of the Collection shall not

exceed the amount for which that item is insured by Owner under the policy that Owner is required to carry under this Section 7.

7. No Reproduction. Unless authorized in advance in writing by Owner, City shall not photograph or reproduce any of the Collection except in connection with a permitted exhibit pursuant to the provisions of Section 8 below. If any photographs or other reproductions are authorized, Owner will have the right to use photographs or reproductions without charge. Notwithstanding the aforesaid, City reserves the right to photograph, at low resolution, the entire Collection upon receipt of the Collection in order to document a base line. A copy of such record will be provided to Owner.

8. Exhibits. In consideration of City's agreement to accept custody and store and safe keep the Collection in accordance with the terms of this Agreement, Owner agrees that Owner will allow City on one or more occasions as the parties mutually agree to exhibit items of the Collection in accordance with written guidelines and procedures that City and Owner will mutually agree to prior to any such exhibit. It being understood, however, that no such exhibit(s) shall be permitted until the parties have mutually agreed upon the guidelines and conditions for exhibits of any items of the Collection that City may wish to undertake.

9. Term. The term of this Agreement shall be for a period of two (2) years. This Agreement shall automatically renew itself from year to year at the end of the initial term or any renewal term unless City has given Owner at least ninety (90) days notice for termination prior to the end of the then current term. Owner may terminate this Agreement at any time on thirty (30) written days' notice to City. In the event the Agreement is terminated, City will turn over the Collection and Ancillary Materials to Owner. Owner and City will reasonably cooperate to facilitate the packaging of the Collection and Ancillary Materials at City premises. Owner will reimburse City for its charges in connection therewith. The cost to relocate the Collection from the Library will be at the expense of Owner.

10. Confidentiality. City shall not, without Owner's prior written consent, publish or communicate to others outside of City the price, cost or estimated value of the Collection or any item regarding the Collection contained within the Ancillary Materials, except if required by law. This provision will survive any termination of this Agreement.

11. Miscellaneous.

(a) This Agreement (including the Exhibits attached hereto) represents the entire understanding of the parties with respect to the subject matter hereof, supersedes any and all other and prior agreements between the parties with respect to the subject matter hereof and declares all such prior agreements between the parties null and void. The terms of this Agreement may not be modified or amended, except in a writing signed by the party to be charged. This Agreement and all matters relating to it shall be governed by the laws of the State of Virginia. This Agreement shall inure to the benefit of, and shall be binding upon, the successors, heirs, executors and administrators of the parties hereto. Any dispute arising hereunder shall be resolved in the courts of the State of Virginia, or the United States federal courts located in the State of Virginia, and the parties hereto consent to the personal jurisdiction of such courts; provided, however, that the parties hereto agree that they will make concerted

efforts to settle any dispute between them in an amicable manner without the necessity of litigation. This Agreement shall not be interpreted for or against a party because such party or such party's legal counsel drafted such provision.

(b) If any term, provision, covenant, or condition of this Agreement, or the application thereof to any person or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such term, provision, covenant, or condition as applied to other persons or circumstances shall remain in full force and effect. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12. Future of the Collection. Owner's intention is to find a permanent home for the Collection in the Hampton Roads area. The Library will certainly be a leading candidate for that role. However, Owner will be under no obligation to City or the Library with respect to the disposition of the Collection which will be Owner's decision in its sole discretion.

13. Notices. The point of contact for Owner and City and the address that all communication should be directed shall be as follows. Either party may change its address and point of contact by written notice to the other.

If to Owner:

Virginia Cartographical Society, LC
Attention: Conrad Hall
7900 World Trade Center
Norfolk, Virginia 23510

If to City:

810 Union Street
Suite 900
Norfolk, VA 23510
Attn: City Attorney

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement the day and year first above written.

VIRGINIA CARTOGRAPHICAL SOCIETY, LC

By:_____(SEAL)
Manager

DRAFT

CITY OF NORFOLK

By:_____(SEAL)
Name:_____
Title:_____

APPROVED AS TO CONTENT:

_____
Deputy City Manager

APPROVED AS TO FORM AND CORRECTNESS:

_____
City Attorney

DRAFT

EXHIBIT A

Maps In Inventory Order

(Attached)

EXHIBIT B

Receipt

(Attached)

DRAFT

EXHIBIT C

Access Considerations

All normal archival practices should be observed. Visitors should produce identification, sign in, and leave pens, portfolios and cases outside the access area. A record should be kept of the visitor and the items to which the visitor has had access. The archivist should affirmatively determine when an item is returned that it has not been tampered with or damaged or removed. Only pencils may be used. An archivist or librarian should be present at all times. Listing these common precautions is not intended to foreclose any additional procedures which the archive follows or which seem appropriate in the judgment of the archivist in a particular situation.

The maps are housed in several different ways:

a. Framed
b. In mylar sleeves with an archival board for stiffness
c. Matted on board with mylar cover
d. In mylar sleeves or folders without a stiffener
e. Folding into books
f. Folding into self-covering boards
g. Rolled up in a tube
h. Stored in a paper portfolio (e.g. *1776 Anthony Smith Chesapeake*)
i. In a few cases, unprotected

For anyone complying with normal archival procedures, access to framed items and to items in mylar sleeves with board stiffeners (a. and b.) can be provided routinely. Of course, the items should not be removed from the sleeves. These maps need not be touched so access can be routine.

A similar standard (routine access) applies to matted maps under mylar cover, and to maps in mylar sleeves or folders without a mat or stiffener, but the user should be cautioned and the superintending archivist should assure that the maps remain at all times flat and *stay in their housing*, as lifting or folding back the mat or mylar would expose the map.

In the remaining categories, e. through i. inclusive, access necessarily involves touching the map. Accordingly, it should be limited to those with a legitimate and particularized need to have access to the original map. Maps which are in a book and have only a centerfold (like most atlas maps) can be seen safely. It is suggested that NO access be provided to maps with multiple folds (e.g., maps in 1771 *Grant to Washington*; and the 1777 *Gallatin-James*), including maps folded down into a book (e.g. 1624 *Smith Generall Historie*; 1786 *Paris Jefferson Notes* and 1787 *London Jefferson Notes*) and, particularly, maps folding down into self-covering boards (e.g., the 1859 *Large Boye Buchholtz* captured from General Garnett). Repeated folding and unfolding will unavoidably break, or extend the existing breaks at, the folds.

The pages in the 1590 *Illuminated deBry Admiranda Narratio* are fragile, so there should be extremely restricted access to this item.

Permission of Owner should be obtained for any photography. Photography should be accomplished if at all possible in natural light (not flash). Owner may wish to prohibit commercial photograph, or assess a charge. If photography is permitted by Owner, Owner may wish to require that any use include a credit line.

DRAFT

C: James Redick, Emergency Preparedness and Response

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

April 26, 2016

From: James Redick, Director – Emergency Preparedness and Response

Subject: Acceptance of FEMA Hazard Mitigation Grant Funding

Reviewed: _____
Wynter C. Benda, Deputy City Manager

Ward/Superward: 2/6

Approved: _____
Marcus D. Jones, City Manager

Item Number: **R-6**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk – Department of Emergency Preparedness & Response

III. **Description:**
This agenda item is an ordinance to authorize the City of Norfolk (the "city") to accept grant funds in the amount of $294,197.20 from the Federal Emergency Management Agency ("FEMA") via the Virginia Department of Emergency Management for the floodproofing of one (1) repetitive loss property. These funds will be added to a previously accepted grant.

IV. **Analysis**
FEMA's Hazard Mitigation Assistance program provides funding for eligible mitigation activities that reduce disaster losses and protect life and property from future disaster damages.

V. **Financial Impact**
These funds will be added to a previously accepted grant which will help cover the total cost of the project to floodproof the property. The cost share remains the same. The revised project budget will now be $627,091.20 – federal share is $470,318.40, state share is $125,418.24 and the local share is $31,354.56.

VI. **Environmental**
N/A

810 Union Street #1101 ▪ Norfolk, Virginia 23510
Phone: 757-664-4242 ▪ Fax: 757-664-4239

VII. Community Outreach/Notification

Public notification for this agenda item will be conducted through the city's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of Emergency Preparedness and Response, the City Attorney's Office, and the Office of Budget & Strategic Planning.

Supporting Material from the Department of Emergency Preparedness and Response:

- Ordinance
- Obligation and Project Management report.

3/16/16 - bjt

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT. Emergency Preparedness and Response

Pursuant to Section 72 of the City Charter, I hereby certify that the money required for this item is in the city treasury to the credit of the fund from which it is drawn and not appropriated for any other purpose.

$ 294,197.20 2275-74-8890
Account

_____ 3/30/16
Director of Finance Date

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE ACCEPTING AN ADDITIONAL GRANT AWARD OF $294,197.20 FROM THE VIRGINIA DEPARTMENT OF EMERGENCY MANAGEMENT WHICH INCLUDES $220,647.90 FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY, $58,839.44 FROM THE COMMONWEALTH OF VIRGINIA AND $14,709.86 AS A CASH MATCH FROM THE CITY THROUGH THE HAZARD MITIGATION GRANT PROGRAM FOR THE CITY OF NORFOLK FLOODPROOFING OF STRICKLAND AND JONES PROJECT AND APPROPRIATING AND AUTHORIZING THE EXPENDITURE OF THE ADDITIONAL FUNDS FOR THE PROJECT.

- - -

WHEREAS, pursuant to Ordinance #45,354 adopted on November 26, 2013 the City was awarded and accepted $332,894 as a Virginia Department of Emergency Management grant for the floodproofing of one commercial structure in the downtown area as the City of Norfolk Floodproofing of Strickland and Jones Project (the "Project"); and

WHEREAS, additional grant funds in the amount of $294,197.20 have been made available for the Project, for total Project funding in the amount of $627,091.20; now, therefore,

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That an additional grant award of $294,197.20 from the Virginia Department of Emergency Management through its Hazard Mitigation Grant Program is hereby accepted.

Section 2:- That the additional grant award of $294,197.20 grant award which includes $220,647.90 from the Federal Emergency Management Agency through its Hazard Mitigation Grant Program, $58,839.44 from the Commonwealth of Virginia and $14,709.86 as a local cash match from the City is hereby appropriated and authorized for expenditure through the Hazard Mitigation Grant Program for the City of Norfolk Floodproofing of Strickland and Jones Project, if and when the funds are made available from the Virginia Department of Emergency Management.

Section 3:- That the City Manager is hereby authorized to administer the Project and to execute all agreements necessary to complete the Project.

Section 4:- That this ordinance shall be in effect from and after its adoption.

COMMONWEALTH of VIRGINIA

Department of Emergency Management

JEFFREY D. STERN, Ph.D.
State Coordinator

CURTIS C. BROWN
Chief Deputy Coordinator

BRETT A. BURDICK
Deputy Coordinator

10501 Trade Court
North Chesterfield, Virginia 23236-3713
(804) 897-6500
(TDD) 674-2417
FAX (804) 897-6506

March 7, 2016

Mr. Steven Pyle, Jr.
Deputy Emergency Management Coordinator
City of Norfolk
3661 East Virginia Beach Boulevard
Norfolk, VA 23502

RE: FEMA-DR-4024-VA-007
Budgetary Revision Approval
Hazard Mitigation Grant Program (HMGP)

Dear Mr. Pyle:

FEMA has reviewed and approved the City's request to change the budget for the *Floodproofing of 1 Repetitive Loss Property* project. The revised project budget total is $627,091. The federal, state and local shares are $470,318, $125,418 and $31,355, respectively. The Period of Performance end date for this project is still October 30, 2016. Please see the enclosed revised project budget and FEMA's approval letter.

If you have any questions or concerns, please contact Trina Addison, hazard mitigation coordinator, at (804) 897-9976 or at Trina.Addison@vdem.virginia.gov. Thank you.

Sincerely,

Matthew W. Wall
Hazard Mitigation Program Manager

MWW/tca

C: James Redick, Director of Emergency Preparedness & Response

Enclosures

City of Norfolk
Floodproofing of 1 Repetitive Loss Property
Project Code: FEMA-DR-4024-VA-007
New Project Budget - After Budgetary Revision
February 29, 2016

Activity	Project Budget
Elevation Certificate (pre-award cost)	$450.00
Preliminary Engineering (pre-award cost)	2,188.00
Pre-Construction Engineering and Drafting *For new wall at the existing store front*	15,000.00
Soil Reports	9,000.00
Division 2 - Existing Conditions	12,109.87
Division 3 - Concrete	328,881.25
Division 5 - Metals	8,556.48
Division 6 - Woods and Plastics	15,852.25
Division 7 - Thermal and Moisture Protection/Contingency	78,631.57
Division 8 - Openings/Contractors O&P	82,553.78
Division 9 - Finishes	21,808.00
Division 22 - Plumbing	1,908.00
Division 26 - Electrical	7,708.00
On-Site Construction Management/Supervision	28,296.00
5% Local Grant Administrative/Management Costs	14,148.00
TOTAL BUDGET	***$627,091.20***

MAR - 3 2016
Office of the Coordinator

U.S. Department of Homeland Security
Region III
One Independence Mall, 6th Floor
615 Chestnut Street
Philadelphia, PA 19106-4404

FEMA

Mr. Jeffrey D. Stern, Ph.D.
State Coordinator
Virginia Department of Emergency Management
10501 Trade Court
North Chesterfield, Virginia 23236-3713

FEB 29 2016

Re: FEMA-DR-4024-VA-007
Budget Revision Approval
Hazard Mitigation Grant Program (HMGP)

Dear Dr. Stern:

We have reviewed and approve your request for a budget revision for the **City of Norfolk Flood Proofing Project, FEMA-DR-4024-VA-007**.

As requested, we have allocated an additional $220,647 federal funds to this project made available under the FEMA Uncommitted Funds Pilot Program. The revised project budget is $627,091, with a federal share of $470,318 and a non-federal share of $156,773. Enclosed please find a copy of the Obligation and Project Management reports for your records.

The Period of Performance for this project remains October 30, 2016. Please continue to provide this office with quarterly reports thirty (30) days after the end of each federal fiscal quarter. The State has ninety (90) days from that date to liquidate all funds and submit all required closeout documents.

If you have any questions, contact John Schmierer, Project Officer, at (215) 931-5547.

Sincerely,

Eugene K. Gruber, P.E.
Director, Mitigation Division

Enclosures

cc: Matthew Wall, State Hazard Mitigation Officer
Trina Addison, Project Coordinator
Janice Barlow, Director, Grants Division

FEDERAL EMERGENCY MANAGEMENT AGENCY
HAZARD MITIGATION GRANTS PROGRAM
Obligation Report w/ Signatures

Disaster No	FEMA Project No	Amendment No	State Application ID	Action No	Supplemental No	State	Grantee
4024	7-R	1	11	2	32	VA	Statewide

Subgrantee: Norfolk
Subgrantee FIPS Code: 710-57000

Project Title : City of Norfolk Floodproofing of 1 Repetitive Loss Property

Total Amount Previously Allocated	Total Amount Previously Obligated	Total Amount Pending Obligation	Total Amount Available for New Obligation
$470,318	$470,318	$0	$0

Project Amount	Grantee Admin Est	Subgrantee Admin Est	Total Obligation	IFMIS Date	IFMIS Status	FY
$220,647	$0	$0	$220,647	02/17/2016	Accept	2016

Comments

Date: 02/17/2016 User Id: JSCHMIER

Comment: MA requests obligation of additional funds for a cost over-run under the Uncommitted Funds Program

Date: 02/17/2016 User Id: CNEWMAN2

Comment: HMO Approves

Authorization

Preparer Name: JOHN SCHMIERER
Preparation Date: 02/17/2016

HMO Authorization Name: GRYSTAL NEWMAN
HMO Authorization Date: 02/17/2016

Authorizing Official Signature	Authorizing Official Title	Authorization Date
	HMA PO/C	2/29/16
	MT - DD	2/29/16

FEDERAL EMERGENCY MANAGEMENT AGENCY
HAZARD MITIGATION GRANT PROGRAM

Project Management Report

Disaster Number	FEMA Project Number	Amendment Number	App ID	State	Grantee
4024	7-R	1	11	VA	Statewide

Subgrantee: Norfolk
FIPS Code: 710-57000

Project Title : City of Norfolk Floodproofing of 1 Repetitive Loss Property

Mitigation Project Description

Amendment Status : Approved

Approval Status: Approved

Project Title : City of Norfolk Floodproofing of 1 Repetitive Loss Property

Grantee : Statewide

Subgrantee : Norfolk

Grantee County Name : Norfolk (city)

Subgrantee County Name : Norfolk (city)

Grantee County Code : 710

Subgrantee County Code : 710

Grantee Place Name : Norfolk

Subgrantee Place Name : Norfolk

Grantee Place Code : 0

Subgrantee Place Code : 57000

Project Closeout Date : 00/00/0000

Work Schedule Status

Amend #	Description	Time Frame	Due Date	Revised Date	Completion Date
1	Award and Grant Agreement	60 days	00/00/0000	00/00/0000	00/00/0000
0	Award and Grant Agreement	60 days	00/00/0000	00/00/0000	00/00/0000
0	Soil Reports and Engineering	120 days	00/00/0000	00/00/0000	00/00/0000
1	Soil Reports and Engineering	120 days	00/00/0000	00/00/0000	00/00/0000
0	Development of Bid Documents	60 days	00/00/0000	00/00/0000	00/00/0000
1	Development of Bid Documents	60 days	00/00/0000	00/00/0000	00/00/0000
0	Legal Review/Documentation Preparation	30 days	00/00/0000	00/00/0000	00/00/0000
1	Legal Review/Documentation Preparation	30 days	00/00/0000	00/00/0000	00/00/0000
1	Advertise Project for Bid	60 days	00/00/0000	00/00/0000	00/00/0000
0	Advertise Project for Bid	60 days	00/00/0000	00/00/0000	00/00/0000
0	Award Contract	30 days	00/00/0000	00/00/0000	00/00/0000
1	Award Contract	30 days	00/00/0000	00/00/0000	00/00/0000
1	Notice to Proceed	30 days	00/00/0000	00/00/0000	00/00/0000
0	Notice to Proceed	30 days	00/00/0000	00/00/0000	00/00/0000
0	Demo/Excavation/Backfill	45 days	00/00/0000	00/00/0000	00/00/0000
1	Demo/Excavation/Backfill	45 days	00/00/0000	00/00/0000	00/00/0000
0	Waterproofing	120 days	00/00/0000	00/00/0000	00/00/0000
1	Waterproofing	120 days	00/00/0000	00/00/0000	00/00/0000
0	Polyurethane Injections	30 days	00/00/0000	00/00/0000	00/00/0000
1	Polyurethane Injections	30 days	00/00/0000	00/00/0000	00/00/0000
0	Flood Shield Installation	30 days	00/00/0000	00/00/0000	00/00/0000
1	Flood Shield Installation	30 days	00/00/0000	00/00/0000	00/00/0000
0	Identify storage location for flood shields	30 days	00/00/0000	00/00/0000	00/00/0000
1	Identify storage location for flood shields	30 days	00/00/0000	00/00/0000	00/00/0000
0	Floodproofing Inspection and Engineer Stamped	60 days	00/00/0000	00/00/0000	00/00/0000
1	Floodproofing Inspection and Engineer Stamped	60 days	00/00/0000	00/00/0000	00/00/0000
0	Project Closeout	90 days	00/00/0000	00/00/0000	00/00/0000

FEDERAL EMERGENCY MANAGEMENT AGENCY
HAZARD MITIGATION GRANT PROGRAM
Project Management Report

Disaster Number	FEMA Project Number	Amendment Number	App ID	State	Grantee
4024	7-R	1	11	VA	Statewide

Subgrantee: Norfolk
FIPS Code: 710-57000

Project Title ; City of Norfolk Floodproofing of 1 Repetitive Loss Property

Work Schedule Status

Amend #	Description	Time Frame	Due Date	Revised Date	Completion Date
1	Project Closeout	90 days	00/00/0000	00/00/0000	00/00/0000
1	Total	26 Months	10/30/2015	00/00/0000	00/00/0000
0	Total	26 Months	10/30/2015	00/00/0000	00/00/0000

Approved Amounts

Total Approved Net Eligible	Federal Share Percent	Total Approved Federal Share Amount	Non-Federal Share Percent	Total Approved Non-Fed Share Amount
$627,091	75.000000000	$470,318	25.00000000	$156,773

Allocations

Allocation Number	IFMIS Status	IFMIS Date	Submission Date	FY	ES Support Req ID	ES Amend Number	Proj Alloc Amount Fed Share	Grantee Admin Amount	Subgrantee Admin Amount	Total Alloc Amount
6	A	08/07/2013	08/02/2013	2013	2301904	7	$249,671	$0	$0	$249,671
25	A	02/17/2016	02/11/2016	2016	2643985	2	$220,647	$0	$0	$220,647
						Total	$470,318	$0	$0	$470,318

Obligations

Action Nr	IFMIS Status	IFMIS Date	Submission Date	FY	ES Support Req ID	ES Amend Number	Suppl Nr	Project Obligated Amt - Fed Share	Grantee Admin Amount	Subgrantee Admin Amount	Total Obligated Amount
1	A	08/08/2013	08/08/2013	2013	2396279	14	14	$249,671	$0	$0	$249,671
2	A	02/17/2016	02/17/2016	2016	2561984	32	32	$220,647	$0	$0	$220,647
							Total	$470,318	$0	$0	$470,318

C: Dir., Norfolk Community Services Board

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

April 26, 2016

From: Sarah Paige Fuller, Director of Community Services Board

Subject: Grant Award of up to $282,984 from the Virginia Department of Behavioral Health and Developmental Services

Reviewed: _____
Wynter C. Benda, Deputy City Manager

Ward/Superward: All

Approved: _____
Marcus D. Jones, City Manager

Item Number: **R-7**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description:**
This agenda item is an ordinance to accept a grant award of up to $282,984 from the Virginia Department of Behavioral Health and Developmental Services ("VDBHDS") through Hampton-Newport News Community Service Board ("HNN-CSB"). Norfolk Community Services Board ("NCSB") is a sub-recipient of this grant.

IV. **Analysis**
This is a two-year grant beginning with FY 2016. This grant will provide permanent supportive housing to individuals who can be discharged from Eastern State Hospital and live independently in the community.

V. **Financial Impact**
This grant provides NCSB with $141,474 the first year and $141,510 the second year. No local match is required for this grant.

VI. **Environmental**
N/A

VII. **Community Outreach/Notification**
Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

810 Union Street #1101 ▪ Norfolk, Virginia 23510
Phone: 757-664-4242 ▪ Fax: 757-664-4239

VIII. Board/Commission Action

The grant award was reviewed by the NCSB Board of Directors

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of Finance, the Office of Budget & Strategic Planning and the City Attorney's Office.

Supporting Material from the Norfolk Community Services Board:

- Ordinance
- Grant Award Contract No. 720C-04454-16L-1

4/4/2016 JEC/11

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT. NCSB

Pursuant to Section 72 of the City Charter, I hereby certify that the money required for this item is in the city treasury to the credit of the fund from which it is drawn and not appropriated for any other purpose.

$ 282,984 2275-31-9156 be
Account

_____ 4/4/16
Director of Finance Date

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE ACCEPTING A GRANT AWARD OF UP TO $282,984.00 FROM THE VIRGINIA DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES THROUGH THE HAMPTON-NEWPORT NEWS COMMUNITY SERVICES BOARD TO NORFOLK COMMUNITY SERVICES BOARD TO PROVIDE PERMANENT SUPPORTIVE HOUSING TO INDIVIDUALS IN EASTERN STATE HOSPITAL ABLE AND ELIGIBLE TO LIVE INDEPENDENTLY IN THE COMMUNITY, AND APPROPRIATING AND AUTHORIZING EXPENDITURE OF THE GRANT FUNDS.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That a grant of $282,984.00 from the Virginia Department of Behavioral Health and Developmental Services through the Hampton-Newport News Community Services Board to Norfolk Community Services Board to provide supportive housing to individuals in Eastern State Hospital able and eligible to live independently in the community is hereby accepted.

Section 2:- That $282,984.00 in grant funds is hereby appropriated and authorized for expenditure, if and when made available from the Virginia Department of Behavioral Health and Developmental Services through the Hampton-Newport News Community Services Board.

Section 3:- That this ordinance shall be in effect from and after its adoption.

DBHDS
Virginia Department of
Behavioral Health and Developmental Services

COPY

CONTRACTOR: Hampton-Newport News Community Service Board (CSB)	**CONTRACT No. 720C-04454-16L-1**
	MODIFICATION No. N/A
ADDRESS: 300 Medical Drive	**CONTRACT TYPE: FIXED PRICE**
Hampton, Virginia 23666	**CURRENT FUNDS: $567,199.51 (2 year period)**
	EXISTING FUNDS: N/A
	TOTAL FUNDED VALUE: $567,199.51 (2 year period)

INTRODUCTION

This contract Agreement, **February 11, 2016** is made between the Commonwealth of Virginia, Virginia Department of Behavioral and Developmental Services (DBHDS) (hereinafter known as "Buyer"), and Hampton-Newport News Community Service Board (HNN-CSB), hereinafter known as "Seller"). The Statement of Work will be performed on an the agreed upon price, in accordance with this Schedule A, below, and any referenced documents listed in **10.0 Order of Precedence** section of this agreement.

SCHEDULE A
Service Description / Specific Terms and Conditions

1.0 Purpose:
The purpose of this agreement is to enter into a contract with HNN-CSB to provide permanent supportive housing services in accordance with the RFP #720C-04454-16L for those individuals within Health Planning Region 5 (Tidewater).

2.0 Funding:
The total not-to-exceed price for all work to be performed under this contract term is **$567,199.51**

3.0 Period of Performance:
The Period of Performance for this contract is **March 1, 2016 through February 28, 2018.**

4.0 Scope of Work:
HNN-CSB shall provide all personnel, activities, office equipment and services in accordance with the attached **STATEMENT OF WORK.**

5.0 Deliverables:
HNN-CSB will provide Specific Tasks as detailed in the attached Statement of Work and approved by DBHDS Technical Person.

6.0 Consideration, Compensation and Payment:

6.1 Other than the initial payment, made at the execution of the contract, per section 6.10

property of DBHDS during, upon and after contract expiration. HNN-CSB shall return any such equipment within thirty (30) days upon completion or cancellation of this contract. In addition, HNN-CSB shall return any equipment purchased under this Agreement if such equipment is not solely being utilized for the activities outlined in this agreement unless otherwise mutually agreed upon in writing.

6.8 No changes/increases to contract cost for subsequent renewals will be allowed unless additional funding is approved as appropriations by the General Assembly.

6.9 DBHDS agrees to pay HNN-CSB a total award of up to an amount, not to exceed, $567,199.51 for the period March 1, 2016 through February 28, 2018 and shall be in accordance with the budget ($283,599.55 - Year One and $283,599.96 Year -Two) in accordance with and outlined in the attached Revenue and Expense Report.

6.10 Payment Schedule for HNN-CSB shall be made as detailed below:

- The first quarterly payment of $88,634.00 will be made upon execution of the contract.

- All other quarterly payments will be made once the delivered services have been met and approved by the DBHDS Technical Person / Contract Administrator and the required quarterly invoice and the Revenue Expense Report are received and approved.

  The remaining quarterly payments for Year 1 and Year 2, after the first quarterly payment referenced above, are estimated to be $68,366.50 and may be increased/decreased by actual services performed during the quarter, of which will be approved by the DBHDS Technical Person / Contract Administrator.

  All quarterly payments combined will not exceed the total awarded contract value.

6.11 DBHDS reserves the right to grant one-time money, when available, to the contract. There may be more than once each contract year that one-time money is granted. The granting of the one-time money will be handled by contract modification agreement, which shall include an additional scope of work and a budget to accomplish the additional scope of work.

Any advance funding shall be approved by DBHDS Finance Office prior to DBHDS Contract Administrator before processing.

7.0 Budget:

See the attached Revenue and Expense Report for the detailed line item cost.

8.0 Technical and Contractual Representatives:

The following authorized representatives are hereby designated for this Subcontract:

f. **Availability of Funds:** It is understood and agreed between the parties herein that the Buyer shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Agreement.

g. **Drug Free Workplace:** During the performance of this contract, the Seller agrees to (i) provide a drug-free workplace for the Seller's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Seller's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Seller that the Seller maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

   For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Seller, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

h. **Contractual Disputes:** Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment. Written notice of the Seller's intention to file such claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. The contract may require submission of an invoice for final payment within a certain time after completion and acceptance of the work. Pendency of claims shall not delay payment amounts agreed due in the final payment.

   The claim shall be filed with the Administrative Services Director setting forth the factual basis for the claim. The Administrative Services Director shall review the claim and notify the Seller of the decision by certified mail within fifteen (15) days of receipt. The notification shall set forth the reasons for the decision and inform the Seller that they may request a review of the decision by the Commissioner by filing such request within ten (10) days of receipt of the initial decision. The Commissioner may convene a panel to advise on a decision. The Commissioner shall render a final decision setting forth the reasons for the decisions within thirty (30) days of receipt of the request for review.

   The Seller may not institute legal action prior to receipt of the Commissioner's decision on the claim as provided in § 2.2-4364 of the *Code of Virginia*, unless the Commissioner fails to render the decision within thirty (30) days of receipt of the claim.

   Failure of the Administrative Services Director or Commissioner to render a decision within the time frames specified shall not have the effect of affirming or denying the claim, but shall only permit the Seller to proceed to the next step in the process. (§ 2.2-4363 of the *Code of Virginia*).

i. **Lobbying:** The Contractor agrees and fully understands that no portion of funds received from the Contracting Agency under this contract shall be used for lobbying efforts either

c. Attachment A – Special Terms and Conditions
d. Attachment B – General Terms and Conditions
e. Attachment C - Revenue and Expense Report

In witness whereof, the duly authorized representatives of Buyer and the Seller have executed this contract on the Dates shown.

HAMPTON-NEWPORT NEWS COMMUNITY SERVICES BOARD (CSB)

(Signature)

NAME: NATALE WARD

TITLE: EXECUTIVE DIRECTOR

DATE: 2/18/16

DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

(Signature)

NAME: CHRISTOPHER FOCA

TITLE: PROCUREMENT DIRECTOR

DATE: 02/23/16

- Completing housing and service needs assessments and individual service plans with participants and providing them access to a full range of treatment and support services grounded in principles of recovery and in the Substance Abuse and Mental Health Services Administration's (SAMHSA) Eight Dimensions of Wellness

2. The PSH program shall identify initial housing units within 30 days of this performance contract, become substantially operational within 5 months, and maintain an occupancy rate at or above 90% (i.e. 14 or more tenants) within the first year of the contract. If the PSH program is not growing at a rate that will achieve this caseload size, the CSB shall provide a written explanation to DBHDS, upon request, and seek technical assistance from the Office of Mental Health Services.
3. The HNN-CSB shall design and implement its PSH program with a high level of fidelity to the SAMHSA PSH evidence based practice.
4. The HNN-CSB shall provide the Consumer ID as reported in CCS, 3 data element # 7 (within CSS) assigned to each individual receiving services through its PSH program and a copy of the individual's lease to DBHDS' Office of Mental Health Services within 30 days of execution.
5. The HNN-CSB shall maximize billing and collection of funds from other sources, in the contract body, to increase the funds available for the PSH program.
6. The HNN-CSB shall include and provide, in the form and format prescribed by DBHDS, applicable information about individuals receiving PSH services and the services they receive in the CSB's information system and its CCS 3 monthly extracts.
7. The HNN-CSB shall reserve any FY PSH state mental health funds that remain unspent at the end of the contract term to be used only for the PSH in subsequent fiscal years as authorized by the Department.
8. The HNN-CSB shall submit implementation status reports for the PSH program as requested by the Office of Mental Health Services during the first year of funding.

C. Conflicts: In the event of any conflict between provisions in this exhibit and in the contract body, the provisions in this exhibit shall control.

subsequent renewals will be allowed unless additional funding is approved as appropriations by the General Assembly and agreed upon by both parties. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.

5. **PRIME CONTRACTOR RESPONSIBILITIES:** The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.

6. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

7. **E-VERIFY PROGRAM:** EFFECTIVE 12/1/13. Pursuant to *Code of Virginia*, §2.2-4308.2., any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of $50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.

8. **CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION:** The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and unless disclosure is required pursuant to court order, subpoena or other regulatory authority, will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the Code of Virginia. Contractors who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Contractors shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.

9. **SECURITY COMPLIANCE**
Supplier agrees to comply with all provisions of the then-current Commonwealth of Virginia security procedures, published by the Virginia Information Technologies Agency (VITA) and which may be found at (http://www.vita.virginia.gov/library/default.aspx?id=537#securityPSGs) or a successor URL(s), as are pertinent to Supplier's operation. Supplier further agrees to comply with all provisions of the (name of Agency) then-current security procedures as are pertinent to Supplier's operation

- Provide access to PHI contained in a designated record set to the DBHDS, in the time and manner designated by the DBHDS, or at the request of the DBHDS, to an individual in order to meet the requirements of 45 CFR 164.524.

- Make available PHI for amendment and incorporate any amendments to PHI in its records at the request of the DBHDS;

- Document and provide to DBHDS information relating to disclosures of PHI as required for the DBHDS to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.524;

- Make its internal practices, books, and records relating to use and disclosure of PHI received from, or created or received by a contractor on behalf of DBHDS, available to the Secretary of the U.S. Department of Health and Human Services Secretary for the purposes of determining compliance with 45 CFR Parts 160 and 164, subparts A and E;

- At termination of the contract, if feasible, return or destroy all PHI received from, or created or received by a Contractor on behalf of the DBHDS that the contractor still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

- Contractor(s) may use or disclose PHI received from the DBHDS, if necessary, to carry out its legal responsibilities and for the proper management and administration of its business. Contractor(s) may disclose PHI for such purposes if the disclosure is required by law, or if contractor obtains reasonable assurances from the person whom to the PHI is disclosed that it will be held confidentially, that it will be used or further disclosed only as required by law of for the purpose for which it was disclosed to the person, and that person will notify the contractor of any instances of which it is aware in which the confidentiality of the information has been breached.

services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

F. **DEBARMENT STATUS:** By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation,. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virignia.

G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs (Insert wording below appropriate to the solicitation type as indicated):**

1. (For Invitation For Bids): Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.

2. (For Request For Proposals): Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

I. **CLARIFICATION OF TERMS:** If any prospective (bidder/offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/offeror) should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

J. **PAYMENT:**

1. To Prime Contractor:

a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the
payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

L. **QUALIFICATIONS OF (BIDDERS/OFFERORS):** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/offeror) to perform the services/furnish the goods and the (bidder/offeror) shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect (bidder's/offeror's) physical facilities prior to award to satisfy questions regarding the (bidder's/offeror's) capabilities. The Commonwealth further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeror) fails to satisfy the Commonwealth that such (bidder/offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.

O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt, unless the contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the contractor shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, the contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:

   a. By mutual agreement between the parties in writing; or

   b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or

   c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract

2. Employer's Liability - $100,000.

3. Commercial General Liability - $1,000,000 per occurrence and $2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

4. Automobile Liability - $1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle.)

Profession/Service	Limits
Accounting	$1,000,000 per occurrence, $3,000,000 aggregate
Architecture	$2,000,000 per occurrence, $6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	$1,000,000 per occurrence, $3,000,000 aggregate
Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.) (Limits increase each July 1 through fiscal year 2031per *Code of Virginia* § 8.01-581.15.	$2,150,000 per occurrence, $4,250,000 aggregate
Insurance/Risk Management	$1,000,000 per occurrence, $3,000,000 aggregate
Landscape/Architecture	$1,000,000 per occurrence, $1,000,000 aggregate
Legal	$1,000,000 per occurrence, $5,000,000 aggregate
Professional Engineer	$2,000,000 per occurrence, $6,000,000 aggregate
Surveying	$1,000,000 per occurrence, $1,000,000 aggregate

U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA VBO (www.eva.virginia.gov) for a minimum of 10 days.

V. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to

Attachment C – Revenue and Expense Report

HNNCSB PSH Revenue & Expense Report	Year One Budget	YTD Exp
Revenue		
Tenant Rent Contribution		
Other Revenue		
Total Revenue	**$ -**	**$ -**
Operating Expense		
Staffing		
Fringe		
Total Personnel	**$ 77,183.30**	**$ -**
Office (supplies, computers, phones)	$ 11,350.25	
Client Engagement Supplies & Travel	$ 4,000.00	
Staff Travel	$ 7,334.00	
Vehicle Purchase & Maintenance	$ 48,000.00	
Staff Training	$ 2,500.00	
Administrative Overhead	$ 5,000.00	
Total Operating Expense with Personnel	**$ 155,367.55**	**$ -**
Housing Support Expense / Reserve Fund		
Rent/Utility Allowance	$ 88,400.00	
Furniture/Furnishings	$ 8,000.00	
Client Assistance & Fees (resolve debts, applications, moving, etc.)	$ 12,532.00	
Extermination, Remediation	$ 4,200.00	
Damages, Remediation	$ 1,700.00	
Security and Utility Deposits	$ 13,400.00	
Total Housing Support Expense / Reserve Fund	**$ 128,232.00**	**$ -**
Total Expenses (Personnel, Operating and Support/Reserve Fund)	**$ 283,599.55**	**$ -**

Department of Behavioral Health and Developmental Services
BUSINESS ASSOCIATE AGREEMENT
QUALIFIED SERVICE ORGANIZATION AGREEEMENT

PREAMBLE

WHEREAS, pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996, and its implementing regulations, the Standards for Privacy of Individually Identifiable Health Information, and the 2013 HIPAA Omnibus Rule, 45 CFR part 160 and part 164 subparts A and E ("Privacy Rule"), and the Health Insurance Reform: Security Standards, Final Rule, 45 CFR part 164 subpart C ("Security Rule"), the Health Information Technology for Economic and Clinical Health Act ("HITECH Act") and pursuant to the Federal Confidentiality of Alcohol and Drug Abuse Patient Records Regulation, 42 CFR Part 2, (collectively the "HIPAA Privacy and Security Rules"), the Department of Behavioral Health and Developmental Services (DBHDS), and the Business Associate/Qualified Service Organization (collectively, the "Parties") wish to enter into an Agreement that addresses the requirements of the HIPAA Privacy and Security Rules.

NOW, THEREFORE, the Parties to this Agreement, in consideration of the mutual covenants, promises, and stipulations set forth below, agree as follows:

1. DEFINITIONS

1.1 "**Department**" means the Department of Behavioral Health and Developmental Services (DBHDS), "covered entity" as defined by 45 CFR § 160.103. The Department is a hybrid entity, as defined by 45 CFR § 160.504.

1.2 "**Business Associate**" means **HNN-CSB, Inc.**, a corporation with its principal place of business at **300 Medical Drive, Hampton, VA 23666**, a "business entity" as defined by 45 CFR § 160.103. A business associate is one that creates, receives, maintains, or transmits PHI on behalf of a covered entity, as well as other specific types of organizations. Business associate contracts must specify requirements for breach notification, electronic access to PHI, etc. Subcontractors are now considered business associates and are bound by the same HIPAA privacy and security requirements.

1.3 " **Protected Health Information**" or "**PHI**" means individually identifiable health information maintained or transmitted in any form or medium, including, without limitation, all information (including demographic, medical, and financial information), data, documentation, and materials that relate to: (i) the past, present, or future physical or mental health or condition of an individual; (ii) the provision of health care to an individual; or (iii) the past, present, or future payment for the provision of health care to an individual.

1.4 **"Qualified Service Organization"** means _____ a Virginia corporation with its principal place of business at _____, a "qualified service organization" as defined by 42 CFR §2.11.

1.5 **"Security Incident"** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

1.6 **"Underlying Service Agreement"** means the contract, agreement, or arrangement (written or unwritten) in effect that governs interactions between the DBHDS and the Business Associate/Qualified Service Organization.

3.1. Report to the DBHDS Privacy Officer, in writing, any use and/or disclosure of the PHI that is not permitted or required by the Underlying Services Agreement of which it becomes aware at the earliest opportunity (but in no event later than fifteen (15) days of the Business Associate/Qualified Service Organization's discovery of such unauthorized use and/or disclosure). Report each individual whose PHI was, or is reasonably believed to have been, accessed, acquired or disclosed.

3.2. Report to the DBHDS Security Officer, in writing, any security incident disclosing PHI of which it becomes aware at the earliest opportunity (but in no event later than fifteen (15) days of the Business Associate/Qualified Service Organization's discovery of such unauthorized use and/or disclosure). In addition, the Business Associate/Qualified Service Organization shall determine whether an event described in this paragraph is a breach of unsecured Protected Health Information that presents a significant risk of financial, reputational or other harm to affected individuals, all within the meaning of the breach notification requirements of the HITECH Act (a "Breach"). If the Business Associate/Qualified Service Organization determines that a Breach has occurred, it shall notify the Plan without unreasonable delay and in no case later than five (5) days following discovery of the Breach. At the election of DBHDS, the Business Administrator shall:

(1) include in its notice to the DBHDS, to the extent possible, the identification of each individual whose PHI has been, or is reasonably believed by the Business Associate/Qualified Service Organization to have been, accessed, acquired, used or disclosed during the Breach. At the time of such notification or as promptly thereafter as the information becomes available, the Business Associate/Qualified Service Organization shall also provide to the Plan any other available information that the DBHDS is required to include in notification to the individual under the HITECH Act; or

(2) provide notice directly to all affected individuals, which shall include, to the extent possible, the following information:

A. A brief description of what happened, including the date of the Breach and the date of discovery, if known.

B. A description of the types of unsecured PHI involved (such as full name, Social Security number, date of birth, home address, account numbers, etc.)

C. The steps individuals should take to protect themselves from potential harm resulting from the Breach.

D. A brief description of what Business Associate/Qualified Service Organization is doing to investigate the Breach, to mitigate losses, and to protect against any further breaches.

E. Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an email address, web site or postal address.

Such notification shall be made without unreasonable delay and in no case later than 60 days following discovery of the Breach. However, notification will be delayed if a law enforcement official determines that it would impede a criminal investigation or cause damage to national security. Notice will be provided by first class mail or by email if the individual has indicated that he prefers that form of delivery. Where Business Associate/Qualified Service Organization and the DBHDS do not have sufficient contact information to permit direct written contact, Business Associate/Qualified Service Organization shall provide alternative notice which may include posting on its web site or other media. Such posting will include a toll-free

3.12. Make any amendment(s) to the PHI that the DBHDS directs or that is required pursuant to 45 CFR § 164.526.

3.13. Business Associate acknowledges that as it is also a Qualified Service Organization pursuant to 42 CFR Part 2 to the extent it, as defined by 42 CFR 2.11 and accordingly may be receiving, storing, processing, or otherwise dealing with any patient substance abuse application, enrollment and treatment records from the DBHDS covered services, it is fully bound by 42 CFR Part 2; and if necessary, will resist in judicial proceedings any efforts to obtain access to substance abuse patient records except as permitted by 42 CFR Part 2

4. OBLIGATIONS OF THE DBHDS

4.1. The DBHDS shall provide the Business Associate/Qualified Service Organization with any changes in, or revocation of, permission by an individual to use or disclose PHI, if such changes affect the Business Associate/Qualified Service Organization's permitted or required uses and disclosures.

4.2. The DBHDS shall notify the Business Associate/Qualified Service Organization of any restrictions to the use that would not be permissible under the HIPAA Privacy or Security Rules if done by the DBHDS, to the extent that such changes may affect the Business Associate/Qualified Service Organization's use or disclosure of PHI.

5. TERM AND TERMINATION OF AGREEMENT

5.1. **Term.** This Agreement shall be effective as of the date of the Underlying Service Agreement, and shall terminate when all of the PHI provided by the DBHDS to the Business Associate/Qualified Service Organization, or created or received by the Business Associate/Qualified Service Organization on behalf of the City, is destroyed or returned to the DBHDS, or, if it is infeasible to return or destroy PHI, protections are extended to such information in accordance with the termination provisions in this Section.

5.2. **Termination for Cause.** If a party hereto has knowledge of a material breach by the other, the non-breaching party shall take the following actions:

a. provide an opportunity for the breaching party to cure the breach or otherwise take corrective action, and if the breach is not cured or corrected, the non-breaching party may cease delivery of PHI or terminate the Agreement;

b. immediately terminate this Agreement if breaching party has breached a material term and cure is not possible; or

c. if neither cure nor termination is possible, the non-breaching party shall report the violation(s) to the Department of Health and Human Services. The non-breaching party reserves the right, in any situation in which a material breach by the breaching party occurs, to report such violation(s) to the Department of Health and Human Services.

5.3. **Termination of Underlying Service Agreement.** The Parties agree that the termination of the Underlying Service Agreement between the Parties will result in the termination of this Agreement. The Business Associate/Qualified Service Organization shall authorize termination of the Underlying Service Agreement by the DBHDS, if the DBHDS determines that the Business Associate/Qualified Service Organization has violated a material term of the Underlying Service Agreement.

caused by or resulting from or arising out of any act or omission on the part of the Business Associate/Qualified Service Organization, its subcontractors, agents, or employees under or in connection with this Agreement or the performance or failure to perform any duty or by the Privacy or Security Rules required by this Agreement. The Business Associate/Qualified Service Organization agrees to indemnify and hold harmless the DBHDS and its agents, volunteers, servants, employees, and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses suffered by any indemnified party or entity as the result of claims or suits due to, arising out of, or in connection with (a) any and all such damages, real or alleged, and (b) the violation of any law applicable to this Agreement. Upon written demand by the DBHDS, the Business Associate/Qualified Service Organization shall assume and defend at the Business Associate/Qualified Service Organization's sole expense any and all such suits or defense of claims made against the DBHDS, its agents, volunteers, servants, employees, or officials.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective on the day and year stated above.

Department of Behavioral Health and Developmental Services	Hampton-Newport News Community Service Board (CSB)
By: _____	By: _____
Print Name: Christopher Ford	Print Name: Natalie Ward
Title: Director, OAS	Title: Executive Director

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

April 26, 2016

From: David Ricks, Director of Public Works

Subject: Traffic Control Signs – Various Locations (25)

Reviewed: _____
Ronald H. Williams, Jr., Deputy City Manager

Ward/Superward: 2/6, 3/7, 4/7, 5/6

Approved: _____
Marcus D. Jones, City Manager

Item Number: **R-8**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk, Department of Public Works

III. **Description:**

This agenda item is in response to requests from area residents and various civic leagues. The Department of Public Works, Division of Transportation has conducted investigations regarding the posting of traffic control signs at the locations listed below and recommends the following amendments to the Code of Norfolk to reflect changes to existing regulations at these locations as referenced on the attached Maps:

Location	Proposed Amendment
1. Military Highway, forty-five (45) miles per hour between Little Creek Road and the Norfolk city limits at the eastern branch of the Elizabeth River, except between the main entrance of 801 N. Military Highway and Raby Road, forty (40) miles per hour, and twenty-five (25) miles per hour on frontage roads between Hoggard Road and the Norfolk city limits at the eastern branch of the Elizabeth River. (Map 1)	Repeal Speed Limit
2. Dominion Avenue at intersection with Camellia Road. (Map 5)	Repeal Yield
3. Raleigh Avenue, eastbound, at its intersection with Claremont Avenue. (Map 3)	Repeal Stop

810 Union Street #1101 ▪ Norfolk, Virginia 23510
Phone: 757-664-4242 ▪ Fax: 757-664-4239

4. Military Highway, forty-five (45) miles per hour between Little Creek Road and the Norfolk city limits at the eastern branch of the Elizabeth River, except between the north side of I-264 and Robin Hood Road, forty (40) miles per hour, and twenty-five (25) miles per hour on frontage roads between Hoggard Road and the Norfolk city limits at the eastern branch of the Elizabeth River. (Map 1)	Add Speed Limit
5. Magazine Lane shall be a one-way street, for southbound traffic only, from W Wilson Avenue to W Olney Road. (Map 2)	Add One-Way
6. Pine Grove Avenue at intersection with Huntsman Road Avenue. (Map 2)	Add Yield
7. Pleasant Avenue, as to westbound traffic, at its intersection with the easternmost end of the Pleasant Avenue Park. (Map 2)	Add Yield
8. 13th Street at its intersection with Armistead Avenue. (Map 3)	Add Stop
9. 14th Street at its intersection with Armistead Avenue. (Map 3)	Add Stop
10. 16th Street at its intersection with Armistead Avenue. (Map 3)	Add Stop
11. Botetourt Street at its intersection with College Place. (Map 3)	Add Stop
12. Claremont Avenue at its intersection with Raleigh Avenue. (Map 3)	Add Stop
13. College Place at its intersection with Yarmouth Street. (Map 3)	Add Stop
14. Dominion Avenue at its intersection with Camellia Road. (Map 5)	Add Stop
15. Duke Street at its intersection with W Freemason Street. (Map 4)	Add Stop
16. E Bayview Boulevard at its intersection with Warwick Avenue. (Map 4)	Add Stop
17. Glade Road at its intersection with Alma Drive. (Map 4)	Add Stop
18. Lois Lane at its intersection with Edward Street. (Map 4)	Add Stop

19. Raleigh Avenue at its intersection with Claremont Avenue. (Map 3)	Add Stop
20. Ridgefield Drive at its intersection with Camellia Road. (Map 5)	Add Stop
21. W Olney Road at its intersection with Orapax Street. (Map 3)	Add Stop
22. Woronoca Avenue at its intersection with Atlans Street. (Map 5)	Add Stop
23. Buckingham Street, between Chesapeake Boulevard and County Street. (Map 5)	Add Trucks of one and one-half tons or over prohibited
24. Henrico Street, between Chesapeake Boulevard and Country Street. (Map 5)	Add Trucks of one and one-half tons or over prohibited
25. Nottaway Street, between Chesapeake Boulevard and Country Street. (Map 5)	Add Trucks of one and one-half tons or over prohibited

IV. Analysis

The investigations consider the flow and volume of traffic of the intersections. The recommendations will improve the traffic flow on city streets.

V. Financial Impact

There will be minimal impact to the City Budget for the installation or removal of these traffic control signs. There will be ongoing maintenance costs associated with the average 10-year life span of the signs and replacement costs for any knockdowns.

VI. Environmental

N/A

VII. Community Outreach/Notification

The stop sign installations have been coordinated with the Wards Corner Civic League and the one-way street has been coordinated with Downtown Norfolk Council and 801 Granby Street Condominium Association.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter has been coordinated with the Department of Public Works and the City Attorney's Office.

Supporting Material from the Department of Public Works:

- Ordinance
- Location Maps

Agenda Overview

Traffic Control Signs – Various Locations (25)

If approved, the City Code will be amended regarding the posting of traffic control signs as follows:

1) "Speed Limit" signs will be repealed at:
   - Military Highway, forty-five (45) miles per hour between Little Creek Road and the Norfolk city limits at the eastern branch of the Elizabeth River, except between the main entrance of 801 N. Military Highway and Raby Road, forty (40) miles per hour, and twenty-five (25) miles per hour on frontage roads between Hoggard Road and the Norfolk city limits at the eastern branch of the Elizabeth River.
2) "Speed Limit" signs will be posted at:
   - Military Highway, forty-five (45) miles per hour between Little Creek Road and the Norfolk city limits at the eastern branch of the Elizabeth River, except between the north side of I-264 and Robin Hood Road, forty (40) miles per hour, and twenty-five (25) miles per hour on frontage roads between Hoggard Road and the Norfolk city limits at the eastern branch of the Elizabeth River.
3) "One Way" signs will be posted at intersection of:
   - Magazine Lane shall be a one-way street, for southbound traffic only, from W Wilson Avenue to W Olney Road.
4) "Yield" signs will be repealed at intersection of:
   - Dominion Avenue at Camellia Road.
5) "Yield" signs will be posted at intersection of:
   - Pine Grove Avenue at intersection with Huntsman Road Avenue.
   - Pleasant Avenue, as to westbound traffic, at its intersection with the easternmost end of the Pleasant Avenue Park.
6) "Stop" signs will be repealed at intersections of:
   - Raleigh Avenue, eastbound, at its intersection with Claremont Avenue.
7) "Stop" signs will be posted at intersections of:
   - 13th Street at its intersection with Armistead Avenue.
   - 14th Street at its intersection with Armistead Avenue.
   - 16th Street at its intersection with Armistead Avenue.
   - Botetourt Street at its intersection with College Place.
   - Claremont Avenue at its intersection with Raleigh Avenue.
   - College Place at its intersection with Yarmouth Street.
   - Dominion Avenue at its intersection with Camellia Road.
   - Duke Street at its intersection with W Freemason Street
   - E Balview Boulevard at its intersection with Warwick Avenue.
   - Glade Road at its intersection with Alma Drive.
   - Lois Lane at its intersection with Edward Street.
   - Raleigh Avenue at its intersection with Claremont Avenue.

3/17/2016mr

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT. Public Works

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE TO REPEAL ONE SUBSECTION EACH OF SECTIONS 25-646, 653, AND 654, AND TO AMEND AND REORDAIN SECTIONS 25-646, 652, 653, 654, AND 656 OF THE NORFOLK CITY CODE, 1979, **SO AS TO** ADD ONE NEW SPEED LIMIT, ONE NEW ONE-WAY STREET, TWO NEW YIELD INTERSECTIONS, FIFTEEN NEW STOP INTERSECTIONS, AND THREE NEW TRUCKS OF ONE AND ONE-HALF TONS ON CERTAIN STREETS PROHIBITIONS.

\- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That one subsection of Section 25-646 of the Norfolk City Code, 1979, regarding speed limits at Military Highway, forty-five (45) miles per hour between Little Creek Road and the Norfolk city limits at the eastern branch of the Elizabeth River, except between the main entrance of 801 N. Military Highway and Raby Road, forty (40) miles per hour, and twenty-five (25) miles per hour on frontage roads between Hoggard Road and the Norfolk city limits at the eastern branch of the Elizabeth River, is hereby repealed.

Section 2:- That one subsection of Section 25-653 of the Norfolk City Code, 1979, regarding the yield intersection at Dominion Avenue at its intersection with Camellia Road, is hereby repealed.

Section 3:- That one subsection of Section 25-654 of the Norfolk City Code, 1979, regarding the stop intersection at Raleigh Avenue, eastbound, at its intersection with Claremont Avenue, is hereby repealed.

Section 4:- That Section 25-646 of the Norfolk City Code, 1979, regarding speed limits, is hereby amended and reordained so as to add the following new subsection:

Military Highway, forty-five (45) miles per hour between Little Creek Road and the Norfolk city limits at the eastern branch of the Elizabeth River, except

between the north side of I-264 and Robin Hood Road, forty (40) miles per hour, and twenty-five (25) miles per hour on frontage roads between Hoggard Road and the Norfolk city limits at the eastern branch of the Elizabeth River.

Section 5:- That Section 25-652 of the Norfolk City Code, 1979, regarding one-way streets, is hereby amended and reordained so as to add the following new subsection:

Magazine Lane shall be a one-way street, for southbound traffic only, from W Wilson Road to W Olney Road.

Section 6:- That Section 25-653 of the Norfolk City Code, 1979, regarding yield intersections, is hereby amended and reordained so as to add the following new subsections:

Pine Grove Avenue at its intersection with Huntsman Road.

Pleasant Avenue, as to westbound traffic, at its intersection with the easternmost end of Pleasant Avenue Park.

Section 7:- That Section 25-654 of the Norfolk City Code, 1979, regarding stop intersections, is hereby amended and reordained so as to add the following new subsections:

13th Street at its intersection with Armistead Avenue.

14th Street at its intersection with Armistead Avenue.

16th Street at its intersection with Armistead Avenue.

Botetourt Street at its intersection with College Place.

Claremont Avenue at its intersection with Raleigh Avenue.

College Place at its intersection with Yarmouth Street.

Dominion Avenue at its intersection with Camellia Road.

Duke Street at its intersection with W Freemason

Street.

E Balview Avenue at its intersection with Warwick Avenue.

Glade Road at its intersection with Alma Drive.

Lois Lane at its intersection with Edward Street.

Raleigh Avenue at its intersection with Claremont Avenue.

Ridgefield Drive at its intersection with Camellia Road.

W Olney Road at its intersection with Orapax Street.

Woronoca Avenue at its intersection with Atlans Street.

Section 8:- That Section 25-656 of the Norfolk City Code, 1979, regarding trucks of one and one-half tons or over prohibited on certain streets; exceptions, is hereby amended and reordained so as to add the following new subsections:

Buckingham Street, between Chesapeake Boulevard and County Street.

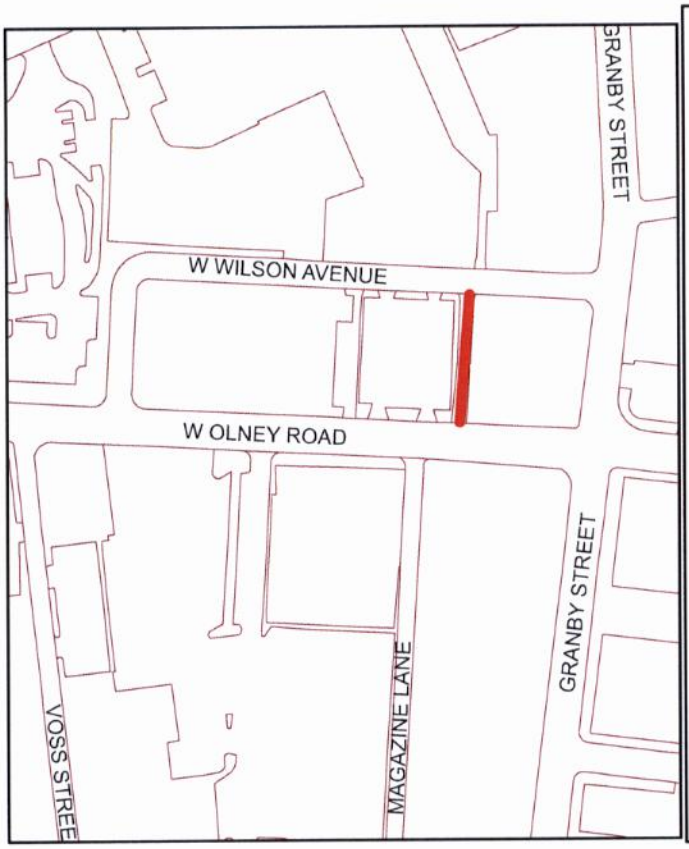
Henrico Street, between Chesapeake Boulevard and County Street.

Nottaway Street, between Chesapeake Boulevard and County Street.

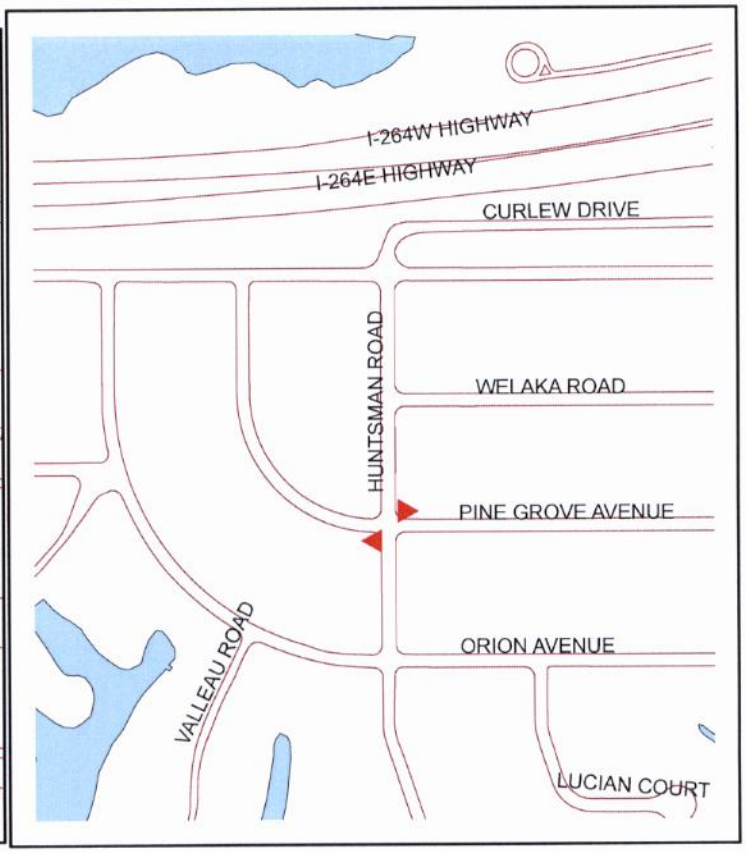
Section 9:- That this ordinance shall be in effect from and after the date of its adoption.

1. Military Highway, forty-five (45) miles per hour between Little Creek Road and the Norfolk city limits at the eastern branch of the Elizabeth River, except between the main entrance of 801 N. Military Highway and Raby Road, forty (40) miles per hour, and twenty-five (25) miles per hour on frontage roads between Hoggard Road and the Norfolk city limits at the eastern branch of the Elizabeth River. (Repeal Speed Limit)

4. Military Highway, forty-five (45) miles per hour between Little Creek Road and the Norfolk city limits at the eastern branch of the Elizabeth River, except between the north side of I-264 and Robin Hood Road, forty (40) miles per hour, and twenty-five (25) miles per hour on frontage roads between Hoggard Road and the Norfolk city limits at the eastern branch of the Elizabeth River. (Speed Limit)



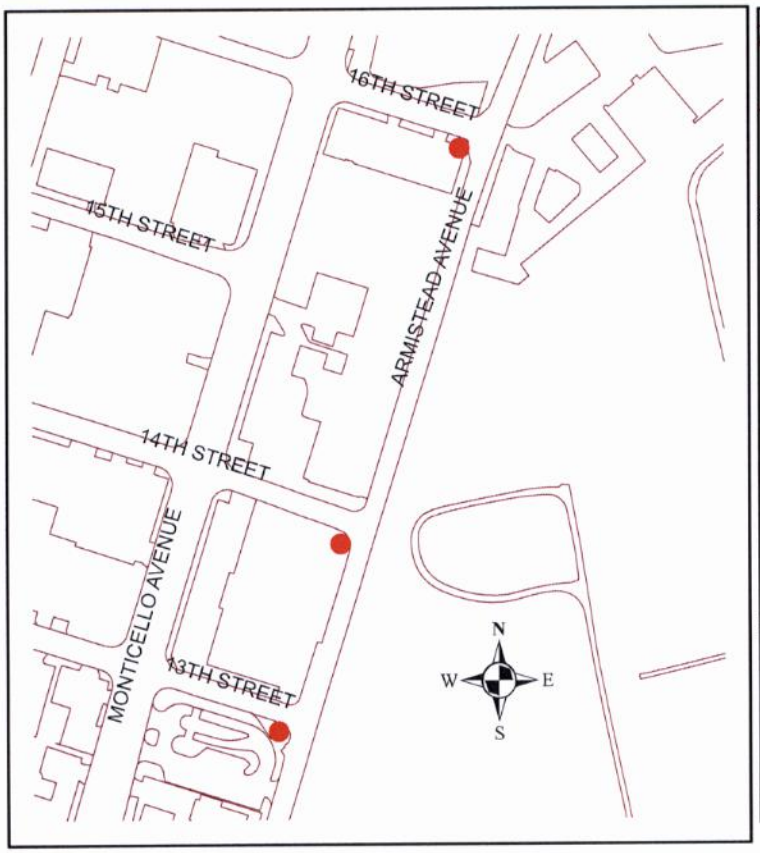
5. Magazine Ln. from W Wilson Ave. to W Olney Rd. (One Way for southbound traffic only)



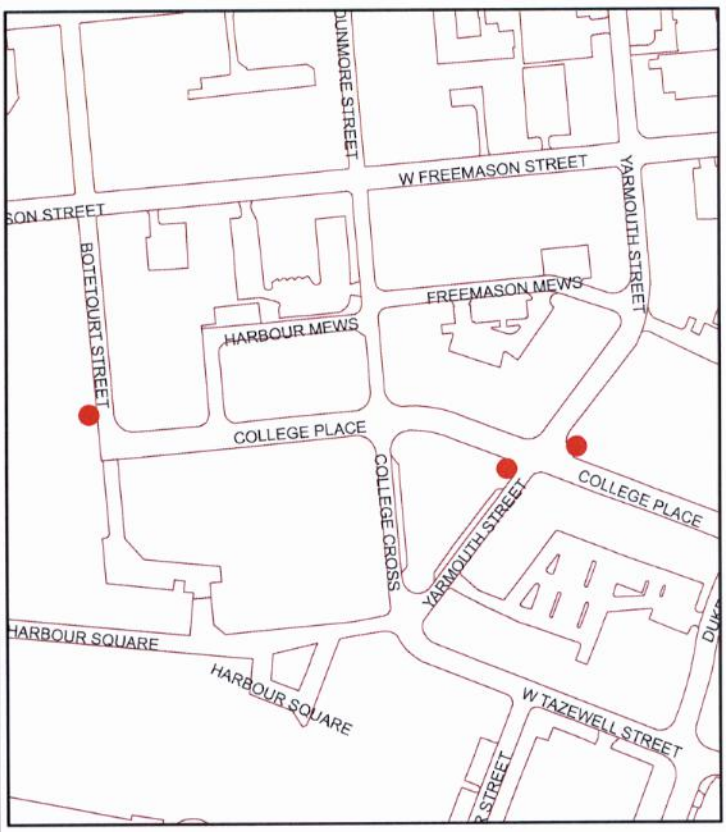
6. Pine Grove Avenue at Huntsman Road Avenue. (Yield))

7. Pleasant Avenue, as to westbound traffic, at the easternmost end of the Pleasant Avenue Park. (Yield)

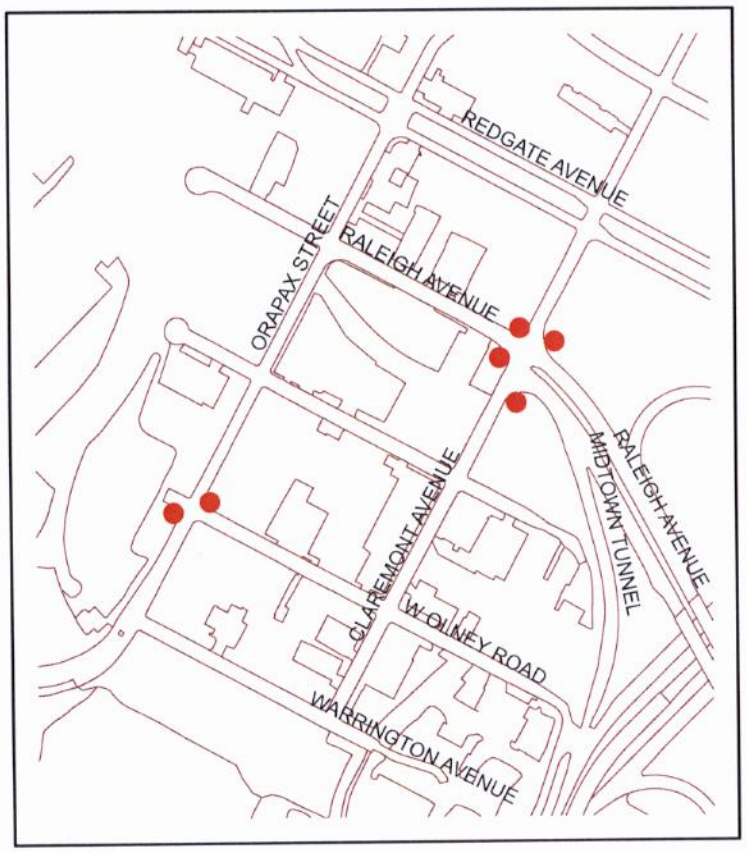
MAP 2



8. 13th St. at its intersection with Armistead Ave.
9. 14th St. at intersection with Armistead Ave.
10 .16th St. at intersection with Armistead Ave.



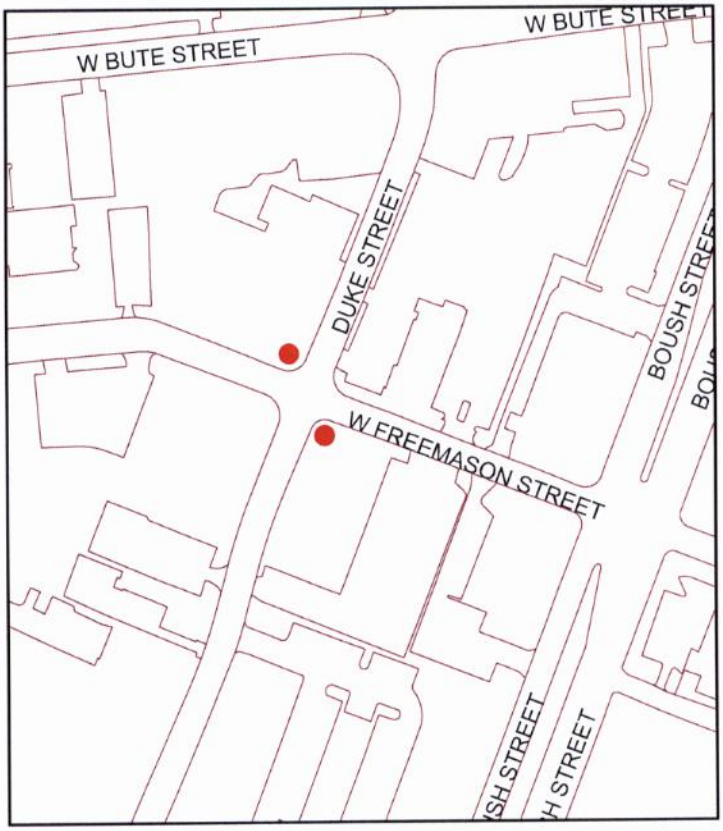
11. Botetourt Street at College Place (Stop)
13. College Place at Yarmouth Street. (Stop)



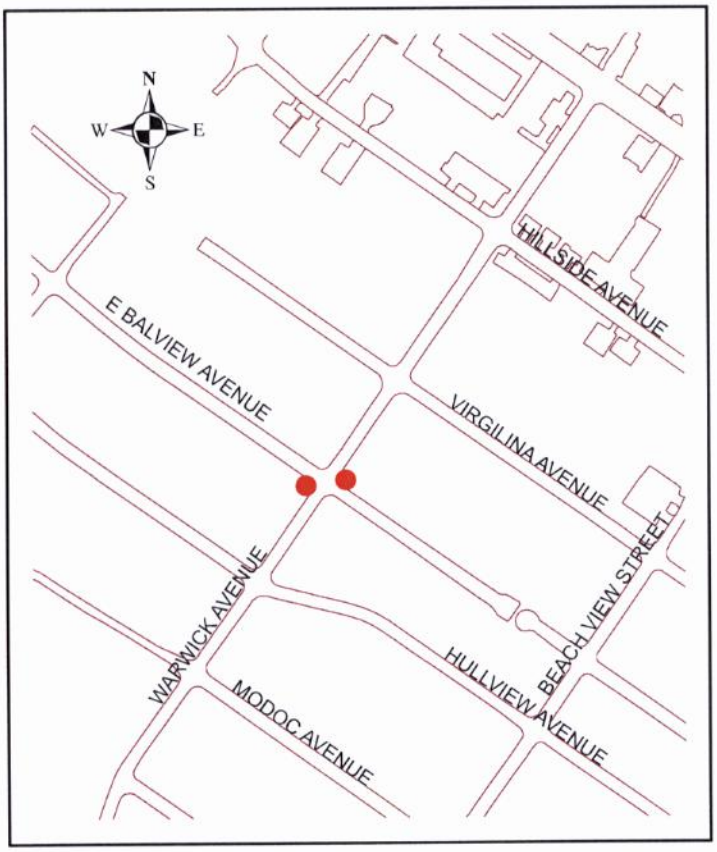
12. Claremont Avenue at Raleigh Avenue. (Stop)
19. Raleigh Avenue at Claremont Avenue. (Stop)
3. Raleigh Avenue, eastbound, at its intersection with Claremont Avenue. (Repeal Stop)
21. W Olney Road at Orapax Street. (Stop)

MAP 3

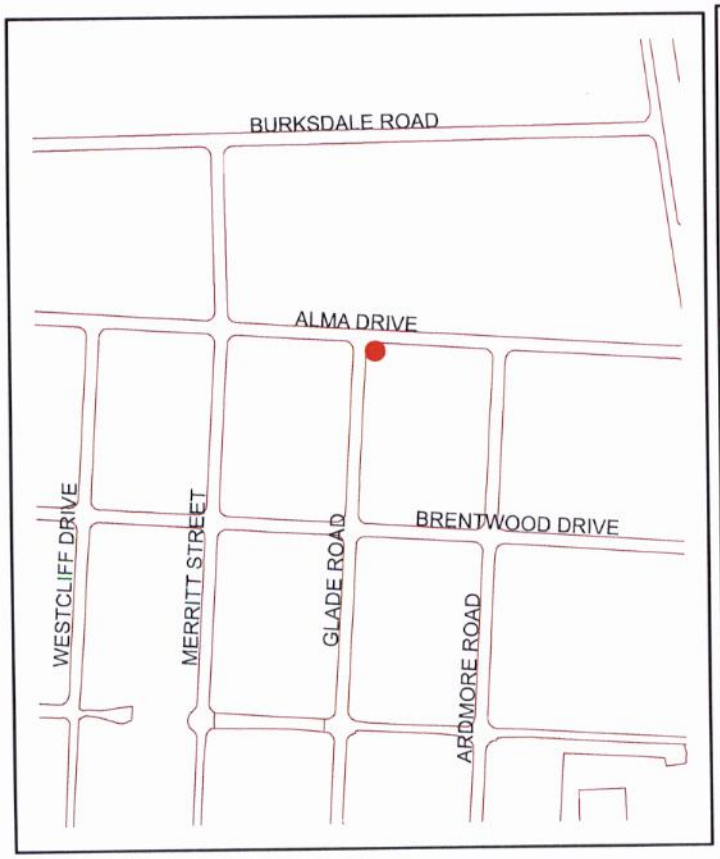
MAP 4



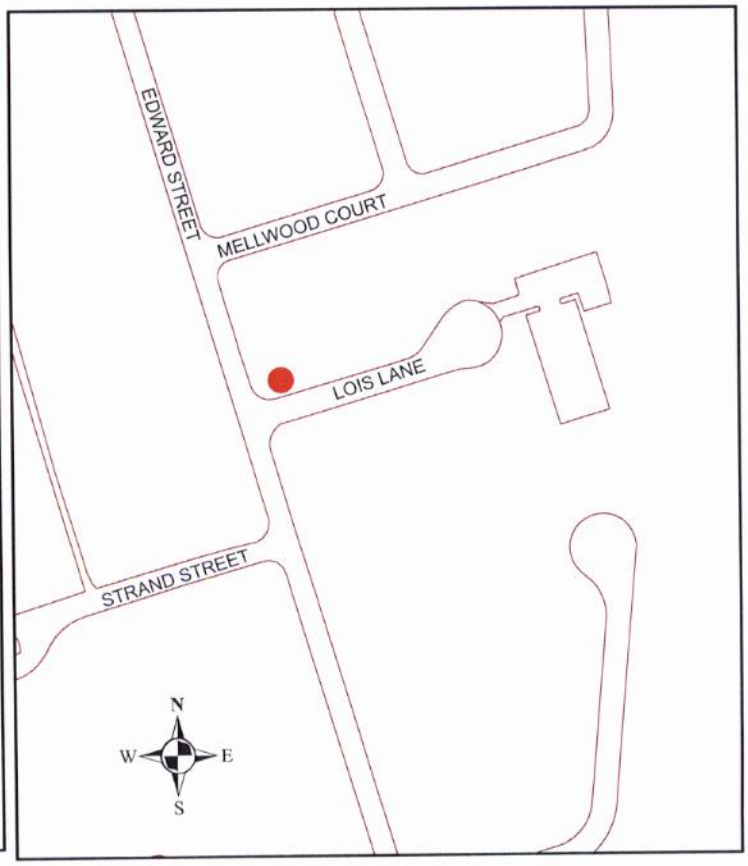
15. Duke Street at W Freemason Street. (Stop)



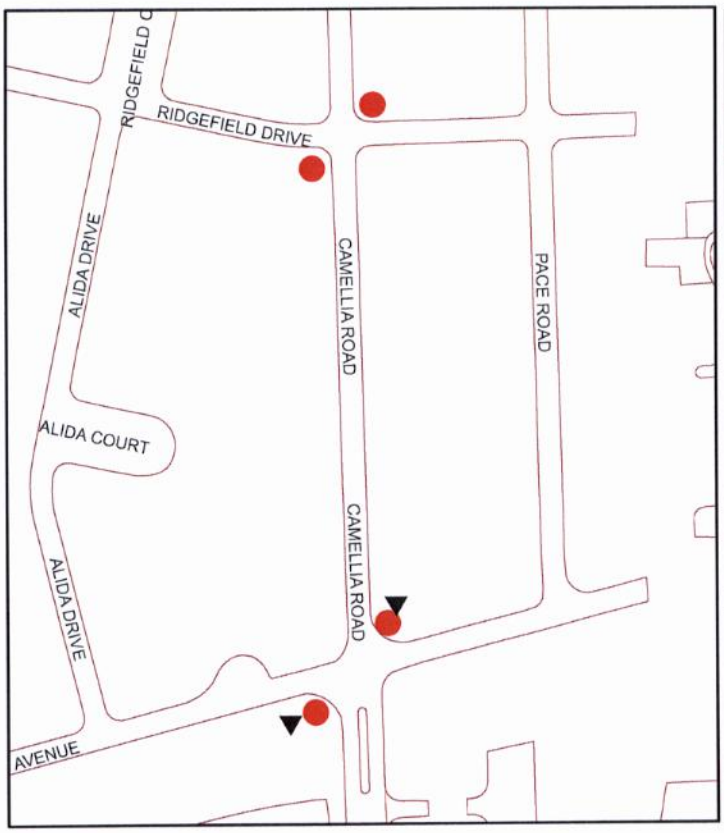
16. E Balview Boulevard at Warwick Avenue. (Stop)

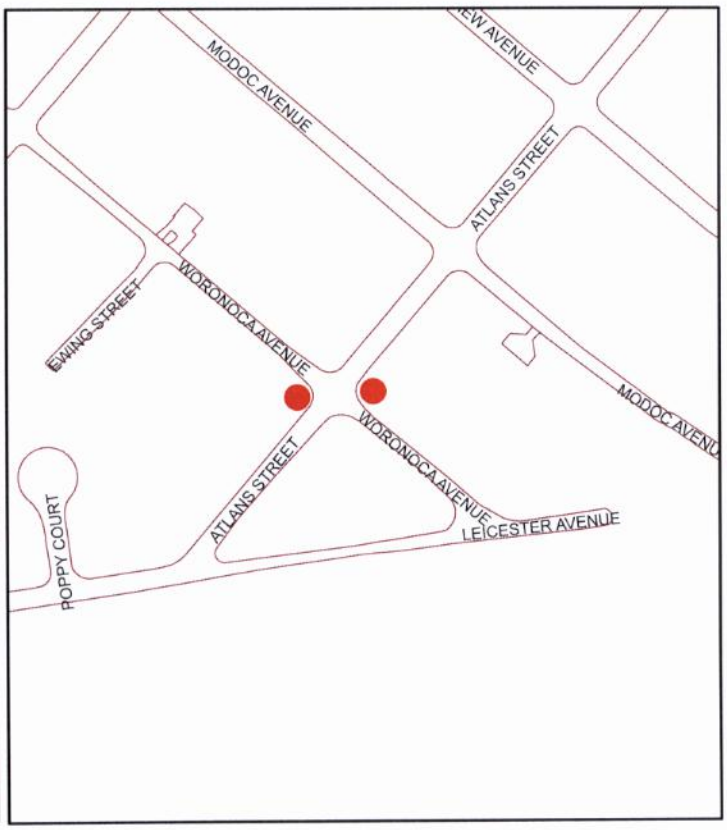


17. Glade Road at Alma Drive. (Stop)



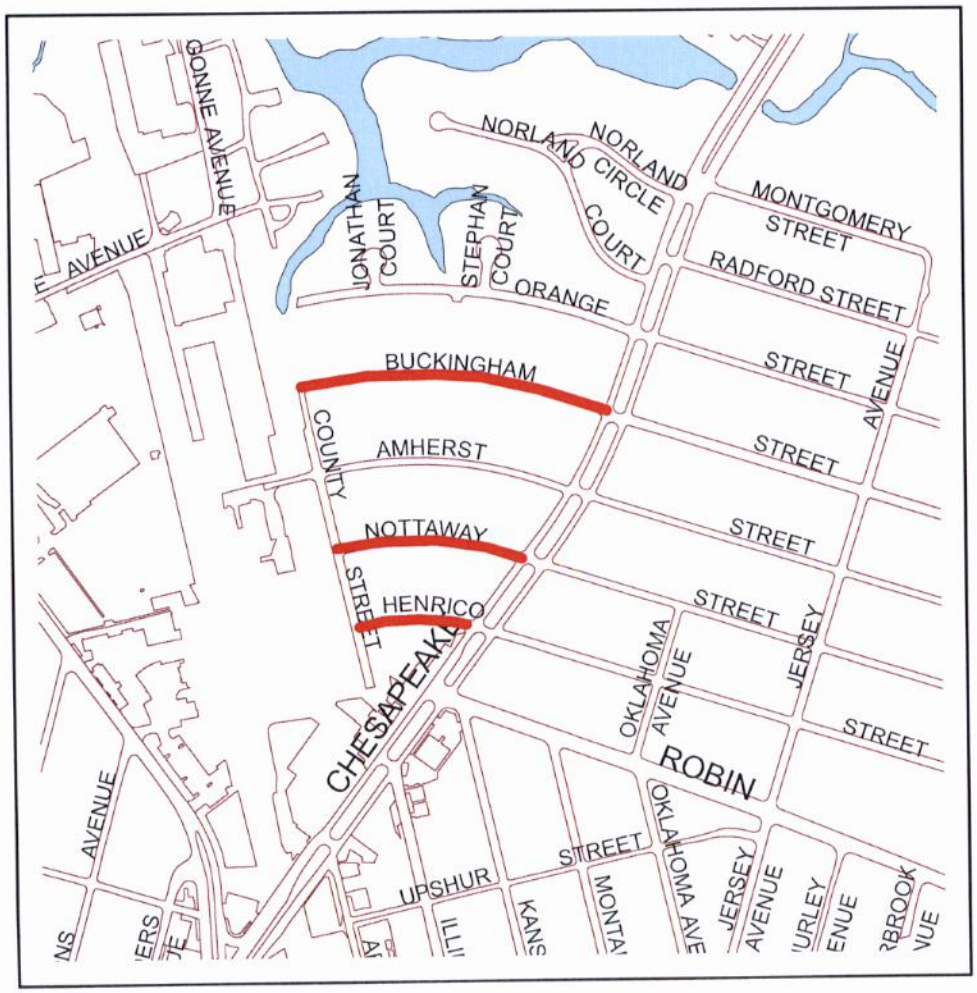
18. Lois Lane at Edward Street. (Stop)





2. Dominion Ave. at intersection with Camellia Rd. (Repeal Yield)
14. Dominion Ave. at intersection with Camellia Rd. (Stop)
20. Ridgefield Drive at Camellia Road. (Stop)

22. Woronoca Avenue at Atlans Street. (Stop)



Trucks of one and one-half tons or over prohibited:

23. Buckingham St, between Chesapeake Blvd and County St.
24. Henrico St, between Chesapeake Blvd and Country St.
25. Nottaway St, between Chesapeake Blvd and Country St.

MAP 5

C: Dir.,Department of Development

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

April 26, 2016

From: Charles E. Rigney, Sr., Director
Department of Development

Subject: Authorization and Approval of Various Easements and Agreements for Norfolk Premium Outlets

Reviewed: _____
Ronald H. Williams, Jr., Deputy City Manager

Ward/Superward: 4/7

Approved: _____
Marcus D. Jones, City Manager

Item Number: **R-9**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description:**
This agenda item is an ordinance to authorize and approve various easements and agreements in furtherance of the May 6, 2016 real estate closing for Norfolk Premium Outlets.

IV. **Analysis**
In order to allow for real estate closing to occur and for the development of the property by Norfolk Outlets, LLC ("Norfolk Outlets"), it is requested that the City of Norfolk (the "city") accept certain easements for utilities, drainage and access and enter into maintenance and other agreements as contemplated in the Site Development Plans for Norfolk Premium Outlets.

V. **Financial Impact**
N/A

VI. **Environmental**
N/A

VII. **Community Outreach/Notification**
Public notification for this agenda item was conducted through the city's agenda notification process.

VIII. **Board/Commission Action**

810 Union Street #1101 ▪ Norfolk, Virginia 23510
Phone: 757-664-4242 ▪ Fax: 757-664-4239

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of Development ad the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance

04/22/2016

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT.

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING A DEED OF EASEMENT FOR PEDESTRIAN ACCESS FROM NORFOLK OUTLETS, LLC TO THE CITY OF NORFOLK, APPROVING A DEED OF EASEMENT FOR FORCE MAIN FROM NORFOLK OUTLETS, LLC TO THE CITY OF NORFOLK, APPROVING A LIGHTING MAINTENANCE AGREEMENT BETWEEN THE CITY OF NORFOLK AND NORFOLK OUTLETS, LLC, APPROVING A LAKE BANK MAINTENANCE AGREEMENT BETWEEN THE CITY OF NORFOLK AND NORFOLK OUTLETS, LLC, AUTHORIZING THE CITY MANAGER TO ACCEPT A DEED OF DEDICATION FROM THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NORFOLK FOR THE PUBLIC ROADWAY TO BE CONSTRUCTED AT LAKE WRIGHT, AUTHORIZING THE CITY MANAGER TO ACCEPT A SPECIAL WARRANTY DEED FROM THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NORFOLK FOR THE RESIDUAL TRACT OF LAND LOCATED WEST OF THE PUBLIC ROADWAY TO BE CONSTRUCTED AT LAKE WRIGHT, AND AUTHORIZING THE CITY MANAGER TO ACCEPT ANY AND ALL EASEMENTS AND TO ENTER INTO SUCH EASEMENTS, MAINTENANCE AND OTHER AGREEMENTS AS ARE REQUIRED BY THE CITY OF NORFOLK FOR THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NORFOLK TO CLOSE UPON THE SALE OF REAL PROPERTY TO NORFOLK OUTLETS, LLC AND AS REQUIRED BY THE SITE DEVELOPMENT PLANS FOR NORFOLK PREMIUM OUTLETS, NORFOLK, VIRGINIA, DATED APRIL 6, 2016.

- - -

WHEREAS the Economic Development Authority (the "Authority") has entered into that certain Real Estate Purchase Agreement dated November 11, 2013, with Norfolk Outlets, LLC ("Norfolk Outlets"), successor in interest to Simon Acquisition II, LLC, for approximately 51 acres of land located at the property formerly known as Lake Wright Golf Course in the City of Norfolk (the "Property)";

WHEREAS a closing under the Real Estate Purchase Agreement is imminent ("Closing");

WHEREAS the City of Norfolk, pursuant to section 2(5) of its Charter, is empowered to acquire real property, or any estate or interest therein, within or without the City for any of the purposes of the City;

WHEREAS, in order to allow for Closing to occur and the development of the Property by Norfolk Outlets, it is the desire and intention of the City Council to accept certain easements for utilities, drainage and access, to accept real property from the Authority, and to enter into maintenance and other agreements as contemplated in the Site Development Plans for Norfolk Premium Outlets, Norfolk, Virginia, dated April 6, 2016 (the "Site Plans"); now therefore

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Deed of Easement for Pedestrian Access from Norfolk Outlets to the City, the Deed of Easement for Force Main from Norfolk Outlets to the City, the Lighting Maintenance Agreement between the City and Norfolk Outlets, the Lake Bank Maintenance Agreement between the City and Norfolk Outlets, the Deed of Dedication from the Authority to the City for the public roadway to be constructed at Lake Wright, the Special Warranty Deed from the Authority to the City for the residual tract of land located west of the public roadway to be constructed at Lake Wright, and any and all easements, maintenance or other agreements required by the City for the Authority to close upon the sale of the Property to Norfolk Outlets and in order to allow for the development of the Property by Norfolk Outlets in accordance with the Site Plans, is hereby approved.

Section 2:- That the City Manager is authorized to accept the easements and to enter into the agreements contemplated in Section

1 above as he may deem necessary in order to carry out the intent of Council, subject to approval as to form and correctness by the Office of the City Attorney.

Section 3:- That this ordinance shall be in effect from and after the date of its adoption.