CITY COUNCIL
AGENDA
TUESDAY, JUNE 28, 2016

Committee Meeting

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

Health, Education And Families Committee

- Lifelong Learning

5:00 PM

Break for Dinner

Council Interests

Documents: 06-28-16 COUNCIL INTERESTS.PDF

Administration Select Topics

Presenter: *Marcus D. Jones, City Manager*

Taylor-Whittle House

Presenter: *David Freeman, Director of General Services*

IKEA

Presenter: *Peter Chapman, Deputy City Manager*

Closed Session

- Appointments

HUD – Section 108 - $19M

Presenter: *Peter Chapman, Deputy City Manager*

Additional Documents

Documents: 06-28-16 MINUTES OF CITY COUNCIL MEETING OF JUNE 14.PDF, 06-28-16 PENDING LAND USE ACTIONS.PDF

Announcement Of Meeting

Documents: 06-28-16 ANNOUNCEMENT OF MEETING.PDF

Formal Session

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

Prayer

Prayer to be offered by Vice Mayor Angelia Williams Graves, 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**.

(A request has been made to continue to August 23, 2016)

Documents: PH-1 REZONING AT 435 VIRGINIA AVENUE - BROCK VENTURES - REQUEST FOR CONTINUANCE.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, on the application of the **City of Norfolk**, to modify the Table of Contents within with City's General Plan, *plaNorfolk2030*, to add the City of Norfolk Sand Management Plan and to incorporate the Sand Management Plan by reference within Appendix B of *plaNorfolk2030*.

Documents: PH-2 ADOPT SAND MANAGEMENT PLAN AND ESTABLISH COASTAL MANAGEMENT AND REVIEW BOARD.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, on the application of the **City of Norfolk**, to amend the future land use designation in the General Plan, *plaNorfolk2030*, from Institutional to Office and for a change of zoning from IN-1 (Institutional) to BC-1 (Business and Commerce Park) District on property located at **900-901 Asbury Avenue**.

Documents: PH-3 CHANGE OF ZONING - 900 AND 901 ASBURY AVE.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, on the application of **Richard Levin**, to change the zoning from C-2 (Corridor Commercial), Pedestrian Commercial Overlay – Riverview (PCO-Riverview) and R-8 (Single-Family) Districts to Conditional C-2 and Pedestrian Commercial Overlay – Riverview Districts on properties now or formally known as **3920 Granby Street and 3917 Columbus Avenue**.

Documents: PH-4 CHANGE OF ZONING - RICHARD LEVIN.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, on the application of

Commonwealth Preservation Group, to designate the existing structure at **6651 Talbot Hall Court** as a Norfolk Historic Landmark.

Documents: PH-5 NORFOLK HISTORIC LANDMARK DESIGNATION - COMMONWEALTH PRESERVATION GROUP.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, on the application of the **City Planning Commission**, for a zoning text amendment to **Section 14-4.2**, "Festivals, bazaars, outdoor sale events, carnivals and circuses," of the *Zoning Ordinance* to increase the number of days allowed for such temporary events within the Pedestrian Commercial Overlay Districts.

Documents: PH-6 TEXT AMENDMENT TO SECTION 14-4.2.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, on the application of **Norfolk Redevelopment and Housing Authority**, for the closing, vacating and discontinuing a portion of **May Avenue**, between **East Virginia Beach Boulevard** and **Booth Street** to the south of **East Virginia Beach Boulevard**, between **May Avenue and Cecelia Street**.

Documents: PH-7 CLOSURE OF A PORTION OF MAY AVE AND 10 LANE - NRHA.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 granting an exemption from real estate taxes by classification for real property of **Old Dominion Real Estate Foundation**.

Documents: PH-8 TAX EXEMPTION - OLD DOMINION UNIVERSITY REAL ESTATE FOUNDATION.PDF

PH-9

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 granting an exemption from real estate taxes for real property of **First Baptist Church**, **Berkley and/or Trustees of First Baptist Church, Berkley** retroactive to September, 2010.

Documents: PH-9 TAX EXEMPTION - FIRST BAPTIST CHURCH BERKLEY.PDF

PH-10

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 DPT Construction, LLC of certain parcels of property located at **1301 and 1303 Wilson Road**.

Documents: PH-10 CONVEYANCE OF GEM LOTS - 1301-1303 WILSON RD.PDF

PH-11

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 Balance Builders, Inc. of certain parcels of property located at **2600 and 2604 Campbell Avenue**.

Documents: PH-11 CONVEYANCE OF GEM LOTS - 2600 - 2604 CAMPBELL AVE.PDF

PH-12

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 the Virginia Historic Restoration Foundation of property located at **227 West Freemason Street, and 334 Duke Street**.

Documents: PH-12 CONVEYANCE OF PROPERTY TO VIRGINIA HISTORIC RESTORATION FOUNDATION.PDF

PH-13

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 real property located at **6000 Northampton Boulevard**.

Documents: PH-13 CONVEYANCE OF PROPERTY LOCATED AT 6000 NORTHAMPTON BLVD.PDF

Regular Agenda

R-1

Letter from the City Manager and an Ordinance entitled, "An Ordinance authorizing the City Manager to enter into a **Cooperation Agreement** with the **Economic Development Authority** of the **City of Norfolk**," will be introduced in writing and read by its title.

Documents: R-1 COOPERATION AGREEMENT WITH THE NORFOLK ECONOMIC DEVELOPMENT AUTHORITY.PDF

R-2

Letter from the City Manager and an Ordinance entitled, "An Ordinance accepting $18,877 from the **Virginia Department of Criminal Justice Services** for the **Juvenile Accountability Block Grant Program**, appropriating and authorizing the expenditure of the funds and $2,097 in local cash matching funds for the **Program** for total **Program** funding in the amount of $20,974," will be introduced in writing and read by its title.

Documents: R-2 ACCEPTANCE OF JUVENILE ACCOUNTABILITY BLOCK GRANT AWARD.PDF

R-3

Letter from the City Manager and an Ordinance entitled, "An Ordinance to amend and reordain the **Norfolk City Code, 1979 SO AS TO** add one new section numbered 12-141.6, relating to the creation of 111 graves in the re-subdivision of Section 26-A, in a portion south of existing **Block 26, Calvary Cemetery Annex**," will be introduced in writing and read by its title.

Documents: R-3 ADD A NEW SUBDIVISION TO CALVARY CEMETERY ANNEX.PDF

R-4

Letter from the City Manager and an Ordinance entitled, "An Ordinance permitting

the **Palace Shops South, LLC** to encroach into the right-of-way at **328 West 20th Street** with lights and signage," will be introduced in writing and read by its title.

Documents: R-4 ENCROACHMENT AT 328 W 20TH ST - THE PALACE SHOPS.PDF

R-5

Letter from the City Manager and an Ordinance entitled, "An Ordinance approving a right of entry permitting the **New Hope Church of God in Christ** to go upon and use that certain City owned property numbered and designated as **616, 618, and 620 West 35th Street**," will be introduced in writing and read by its title.

Documents: R-5 RIGHT OF ENTRY AGREEMENT WITH NEW HOPE CHURCH OF GOD IN CHRIST.PDF

R-6

Letter from the City Manager and an Ordinance entitled, "An Ordinance accepting $52,074.00 in additional grant funding from the **Virginia Department of Criminal Justice Services** for the continuation of the **FY16 Victim/Witness Assistance Program**, appropriating and authorizing the expenditure of the additional grant funds for the program and authorizing the hiring of one (1) additional person for the program in a **Special Project** employment status," will be introduced in writing and read by its title.

Documents: R-6 VICTIM WITNESS ASSISTANCE PROGRAM GRANT.PDF

R-7

Letter from the City Attorney and an Ordinance entitled, "An Ordinance designating **Philpotts Road** as **Walter H. Green, Sr. Road**," will be introduced in writing and read by its title.

Documents: R-7 DESIGNATION OF PHILPOTTS RD AS WALTER H. GREEN SR. RD.PDF

THE CITY OF NORFOLK

June 24, 2016

City Council;

Today's memo includes information from the June 14th Council meeting. Highlights include:

- Ocean View Elementary
- Neighborhood beautification
- Norfolk Public Schools meetings

A team of teens, city staff and Councilwoman Mamie Johnson brought home Norfolk's third All-America City (AAC) award on Sunday. Norfolk competed against 20 other cities, counties and towns for the honor. Congratulations!!

This year, the All-America Awards program highlighted community efforts to "ensure that all our children are healthy and successful in school and life." The AAC finalist communities addressed topics such as: school attendance, racial equity, health and well-being (of children, parents and community), neighborhood safety, poverty, nutrition, affordable housing, and healthy natural environments.

More accolades! The Government Financial Officers Association (GFOA) awarded the Certificate of Achievement for Excellence in Financial Reporting for our FY 2015 Comprehensive Annual Financial Report (CAFR). This is the 30th year the City won the award.
You'll recall earlier this year we received national recognition from the Government Finance Officers Association for the FY 2015 Budget Document.

In addition, we also climbed the rankings for having one of the best fleets in the country! 100 Best Fleets ranked Norfolk #55 this year. Last year, we ranked #66.

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:	June 24, 2016

Today's memo includes information regarding Council Interests from Tuesday, June 10th Informal Session.

Philpotts Road designation: City staff initiated the process and the resolution for Council consideration is included in today's Council packet.

Hampton Blvd. signage: The current configuration is in accordance with the Virginia Work Area Protection Manual and the approved plan. Staff will contact Virginia Department of Transporation and direct their contractor install a "Terminal Blvd." placard on the existing detour signs. Staff will monitor so the change does not encourage drivers to ignore the detour and cut through W. Little Creek Road. The current detour route for these overnight and weekend closures is Hampton Boulevard to Admiral Taussig Boulevard.

Norfolk Public Schools: Staff is working on a schedule of meetings with Norfolk Public Schools.

Project Dashboard: Information on active Capital Improvement projects and other major projects are located on the City website at: http://www.norfolk.gov/index.aspx?NID=191

The Main Hotel & Conference Center: . Gold Key, PHR is the developer of The Main. Gold Key will own the Hilton hotel. The City will own the conference center and the parking garage. Gold Key will operate the conference center on behalf of the City. The Waterside Marriott is similar. The hotel is privately owned and their staff manages the conference center. The City owns the conference center and adjacent parking garage. The Main will have three world-class restaurants and rooftop dining.

The Public Amenities Fund will cover the entire cost of the $52.5 million conference center. Council established this fund in 2003 using 1% of hotel tax and 1% of meals tax. Each year the money spent in Norfolk hotels and restaurants adds more than $5 million to the fund. There is more than enough money in this fund to pay for the $52.2 million conference center without competing for dollars needed for education, public safety and other services. The city's parking system, using revenue collected from its users, will cover the cost of the $19.5 million parking garage. Gold Key is investing $75 million in the new hotel.

Ocean View Elementary: The 2014 conceptual design renderings were completed at 35% of construction design. Some items depicted either weren't feasible or slight design modifications were requested by the Architectural Review Board (ARB). It was originally conceived that the Wyland mural would be relocated from the existing school to the new school like the bell. However, the existing mural is painted on plywood. City staff continues to look for ways to salvage the piece.

The ARB reviewed and approved the brick color samples. Renderings often present a different shade or tone of color based on differences in electronic monitors or ink printers. A mockup wall is required for all building facades prior to construction. The Ocean View ES wall will be built this month in order to confirm final exterior finish selections.

Shopping Cart Pickup: Public Works has a crew that picks up shopping carts two times per week usually on Monday and Wednesday (sometimes Thursday). On average the crew picks up around 25 shopping carts on each visit in the vicinity of the Southern Shopping Center.

Potholes: Ridgeway Road and Rippard Road are on Navy property. Public Works staff notified the appropriate Navy personnel about the pothole concerns.

Bridge Lift Signage: Public Works staff is reviewing options to alert drivers on Brambleton Avenue about a Berkley Bridge lift in progress.

Neighborhood Beautification: The Department of Neighborhood Development is improving processes and staffing to support neighborhood beautification efforts citywide.

Beginning in July the Neighborhood Development's Neighborhood Quality Division will be aligned with the three (3) Police Precincts with a "Team Leader" position assigned to each team. Norfolk Police Chief, Michael Goldsmith and the Department of Neighborhood Development have been working collaboratively on this new strategic alignment. The expectation is that each team will work seamlessly with each of the Patrol Districts Community Resource Officers (CROs), Neighborhood Development Specialist, Health Department, Planning and Zoning and Waste Management. This alignment will foster a team approach to Code Enforcement within each of the Police Precincts and enable sharing of information throughout each team's area of the City.

In order to take advantage of the extra hours of daylight, an alternate work schedule for Code Inspection staff will start next month. The division will align with the three Norfolk Police Precincts. This allows for additional flexibility in scheduling and supervision. Each week of the month a "Team" will work alternate hours that allow for afternoon and early evening engagement in the neighborhoods. The times proposed are 9am until 7:30pm, 4 days a week. Inspectors will also work two (2) 8-hour Saturday shifts per month. This provides staff a better opportunity to partner with residents who work 9:00am – 5:00pm Monday-Friday. Code Inspectors will educate residents on code enforcement first since our goal is to seek voluntary compliance and then use progressive enforcement on violations that usually occur after hours, for example commercial vehicles in residential areas, parking on the grass, trash set outs, etc.

THE CITY OF NORFOLK

As part of electronic permitting, Code Enforcement staff will begin using technology in the field starting next month. All the information concerning a history of a parcel, owner information and reviewing city actions will be at their fingertips. This real-time exchange of information will allow staff to make data-driven decisions, improve efficiencies and eliminate duplicate enforcement by multiple departments.

Safe Streets: The focus of Complete Streets and neighborhood funding is to reduce vehicular accidents with bicyclists and pedestrians. Complete Streets are streets that are designed—or redesigned—and operated to allow safe access to all people, regardless of age, ability, income, ethnicity, or chosen mode of travel, including pedestrians, bicyclists, motorists and transit riders. For example, Public Works has identified $2M in state funds leftover from other projects. Staff will reprogram that money and prioritize key intersections for improvement.

Have a great weekend.

City of Norfolk

Inter Department Correspondence Sheet

TO: Members of City Council

FROM: Breck Daughtrey, City Clerk

COPIES TO:

SUBJECT: Minutes of City Council Meeting

June 24, 2016

Attached are the minutes of the Committee meeting and City Council meeting and held on Tuesday, June 14, 2016.

Breck

Breck

NORFOLK, VIRGINIA

TRANSPORTATION INFRASTRUCTURE COMMITTEE MEETING

TUESDAY, JUNE 14, 2016

The meeting was called to order with the following members present: Mayor Fraim, Mr. Riddick, Mrs. Graves and Dr. Whibley.

TRANSPORTATION UPDATE

Deputy City Manager Williams reported that construction is underway on the I-564 intermodal connector. Contract work continues; however, VDOT is working with Eastern Federal Lands on a plan to consider whether they will continue with the current contractor, Cherry Hill, and keep them to the established schedule or negotiate a new schedule, or whether the project will be stopped and rebid. They expect to conclude negotiations in the next week or two and the Secretary of Transportation is directly managing this. Mayor Fraim asked if there is a time schedule. Mr. Williams answered no, and that is part of what they are negotiating.

The new Midtown Tunnel will be opening ahead of schedule. One westbound lane will open in June; the full opening is in August. Renovation is planned for the eastbound tunnel and the lanes will be alternated during that process. Final completion is spring of 2017. The Elizabeth River Trail should re-open in November.

MILITARY HIGHWAY URBAN DEVELOPMENT AREA STUDY

Deputy City Manager Ron Williams stated that the Urban Development Area initiative provides a road map for the future of Military Highway and transit-oriented development in the area. A video on Vision 2100 was played for the Committee following which a presentation was delivered by Vlad Gavrilovic of Renaissance Planning Group.

Mr. Gavrilovic stated that the study considered: 1) the growth of the city, 2) the growth of the market area, 3) the growth of affluence, 4) new demographics in the area of active baby boomers, retirees and young families, 5) resilience of the site, 6) regional prominence of the area and 7) possible extension

of light rail. A series of public meetings were held and they worked with an advisory committee. While working with the advisory committee they took a close look at two light rail alignments. In response to the goals of the advisory committee and citizens, pulling the alignments off the 12-lane arterial highways into a new transit boulevard was examined. This concept has worked well in places like Portland and San José, and offers the opportunity to create transit-oriented development and a walkable, urban environment. The alignment chosen by the advisory committee would come off the Newtown Road station, continue along Kempsville Road with stations at Sentara Leigh Hospital, Military Circle and Janaf Shopping Center and then continue along Military Highway.

The vision is mixed use, with residential, commercial, and institutional development. Over the next few decades, this area can be transformed into a series of new urban communities with parks and plazas and green space. A final report will be complete in the next month or two.

TRANSIT EXTENSION STUDY

Mr. William Harrell, President and CEO of Hampton Roads Transit, stated that the Federal Transit Administration recommended studying two potential light-rail routes to the Norfolk Naval Station. The western route would begin near the Eastern Virginia Medical School, continue through Ghent and Old Dominion University and proceed on to the naval station. The eastern route would start near the eastern terminus of the existing line and proceed north to Military Circle, Norfolk International Airport and then west to the naval station.

Mayor Fraim asked if any other cities might assist with funding. Mr. Harrell answered that it is going to take a dedicated regional funding source for public transit and the cities need to rally behind each other. He added that HRT is seeking federal funding which could potentially pay for half the projects but the other half would come from state and local funds.

NORFOLK, VIRGINIA

BUSINESS MEETING OF COUNCIL

TUESDAY, JUNE 14, 2016

President Fraim called the meeting to order at 5:20 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 the Council interests.

A. CLOSED SESSION

Motion for closed session was approved for purposes which are set out in **Clause(s) 1,3 and 7 of subsection (A) of Section 2.2-3711** of **the Virginia Freedom of Information Act**, as amended:

(1) Discussion of candidates for appointment to city boards, commissions and authorities.

(3) Discussion of the acquisition of real property for public purpose in the Riverview area of the city.

(7) Consultation with legal counsel regarding the use of Community Development Block Grant funds.

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

No: None.

B. COUNCIL INTERESTS

1. Councilman Riddick:
   - Expressed concern with traffic going at high rates of speed throughout the city; trucks coming from the port; city vehicles, drivers speeding through red lights and going around school buses; and police cars and pedestrians jaywalking. He suggested additional resources to increase the traffic bureau.
   - Asked for a disparity study regarding minority businesses doing business with the city.
   - Use public service announcements more efficiently for traffic alerts, TV and radio ads and ads on HRT buses.

2. Councilman Winn:
   - Asked for a sign on Brambleton Avenue to notify drivers when the Berkley Bridge is open.

3. Councilwoman Whibley:
   - Asked for a sign on Hampton Boulevard going toward Terminal Boulevard before Little Creek Road that says, Terminal Boulevard eastbound is closed.
   - Asked to schedule four to six joint meetings with the school board, stating that there was very little interaction and discussion about the budget this year. She asked if they could pursue the revenue formula that she discussed with the Manager and maybe talk about it at the retreat.

4. Councilwoman Johnson:
   - Suggested they do a better job with communicating with the school board, and to schedule more discussions with NPS about budget, shared resources and continuing revenue to support their needs along with what the City can provide.
   - Asked to connect with Norfolk communities about job opportunities in the City of Norfolk, and for a list of all job opportunities in the city, including businesses opening in 2017, stating that she would like Norfolk citizens to get the jobs first.

5. Vice Mayor Graves:
   - Asked to partner with Opportunity Inc., to help Norfolk citizens applying for job opportunities, i.e. job applications, resumes, interview skills, etcetera.
   - Asked the administration to address concerns with people doing car repair in a residential neighborhood at 429 Honaker Avenue.

6. Councilman Smigiel:
   - Asked for an update on the Main and where they are with the project budget, expected opening date, and what has changed with the project since the last update. Also include the same information on school construction and where they are with that, including change orders and etcetera.
   - Expressed concern with the Wyland painting replica that will no longer be included unless the school system pays for it, noting that Council should be consulted on change orders.
   - In regards to the grass cutting schedule, he asked what happened with partnering with the Sheriff's Office on grass cutting, weed eating, median maintenance and urged staying on top of it.

- Asked if the city is still policing orphan shopping carts left at bus stops.
- Asked if the city still has crews checking for burned-out street lights and also asked for an updated list on lights that are out so that the city can get a discount from Dominion Power.
- Asked for a conversation with the School Board to talk about teacher compensation, stating that Norfolk is losing quality teachers and administrators to surrounding cities.

7. Mayor Fraim:

- Asked for a study on what other communities pay their teachers and administrators.

- Stated he received requests for a designation of a portion of Philpotts Road to be named Walter Green and asked the City Clerk and City Attorney to draw something up to honor this request and they can vote on it at the next meeting.

C. GLASS ART CENTRIC BOUTIQUE HOTEL

Peter Chapman, Deputy City Manager, reported as follows:

- There is a revenue sharing performance-based grant ordinance on today's agenda for this project.
- The proposal is to redevelop the Royster Building into a boutique hotel that would also be a glass art destination.
- It will be a 120-Autograph Collection Hotel by Marriott and a $27 million investment that will create 60 permanent jobs.
- The EDA grant would be $5 million for 15 years.
- Consideration of a parking agreement similar to other downtown hotels will be taken up at a later date.

D. SHORT TERM RENTALS

Adam Melita, Deputy City Attorney, reported as follows:

- Short term rentals are easier to operate – easier to list and easier to book.
- Short term rentals fill a demand – guests who want more than a hotel, but don't need an apartment.
- Short term rentals are illegal in Norfolk – single-family zoning rule limits use of any dwelling to one family per 30-day period.
- Two kinds of operators: single owner-occupied residence and single vacant residence.
- Virginia 2015 Statistics – 4,500 hosts, 15,000 guests, average length of stay 3.3 nights, average income for a host $4,300.

- Typical regulations: Basic Public Safety – permit administrative with fee, maximum occupancy, smoke alarms and fire extinguishers required; Neighborhood Protection – emergency contact, owner must be present, enhanced parking rules, density limits, special use permit required; Regulating the Market – occupancy tax, inspections, guest registry.

NORFOLK, VIRGINIA

ACTION OF THE COUNCIL

CITY COUNCIL MEETING

TUESDAY, JUNE 14, 2016 – 7:00 P.M.

President Fraim called the meeting to order at 7:00 p.m.

The opening prayer was offered by Councilman Paul R. Riddick, followed by the Pledge of Allegiance.

The following members were present: Ms. Graves, Ms. 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.

CERTIFICATION OF CLOSED MEETING

A Resolution entitled, "A Resolution certifying a closed meeting of the Council of the City of Norfolk in accordance with the provisions of the Virginia Freedom of Information Act," was introduced in writing and read by its title.

ACTION: The Resolution as introduced was **adopted**, effective June 14, 2016.

Yes: Graves, Johnson, Protogyrou, Riddick, 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 approving the terms and conditions of a Lease of space in City Hall to **Suntrust Bank** for the location of an ATM machine.

Thereupon, an Ordinance entitled, "An Ordinance approving the terms and conditions of a Lease of space in City Hall to **Suntrust Bank** for the location of an ATM Machine," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective July 15, 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, to hear comments on the conveyance to **Balance Builders, Inc**. of a certain parcel of property located at **4014 Powhatan Avenue** for the total sum of $18,000.00 in accordance with the terms and conditions of the Purchase and Sale Agreement.

Thereupon, an Ordinance entitled, "An Ordinance authorizing the conveyance to **Balance Builders, Inc**., of a certain parcel of property located at **4014 Powhatan Avenue** for the total sum of $18,000.00 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 July 15, 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 issuance of up to $175,000,000 in **General Obligation Bonds** (the "Bonds") of the City of Norfolk, Virginia (the "City"), to finance a portion of the City's Capital Improvement Program.

Ellis James, 2021 Kenlake Place, spoke in favor of this matter.

Thereupon, an Ordinance entitled, "An Ordinance authorizing the issuance and sale by the City of Norfolk, Virginia, of up to $175,000,000 in **General Obligation Capital Improvement Bonds**," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

REGULAR AGENDA

R-1 Letter from the City Manager and an Ordinance entitled, "An Ordinance authorizing the issuance and sale by the City of Norfolk, Virginia, of up to $360,000,000 in **General Obligation Refunding Bonds** to refund earlier bond issues," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-2 Letter from the City Manager and an Ordinance entitled, "An Ordinance authorizing the issuance and sale by the City of Norfolk, Virginia, of up to $160,000,000 in **Water Revenue Refunding Bonds** to refund earlier bond issues," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-3 Letter from the City Manager and an Ordinance entitled, "An Ordinance to grant a Certificate of Appropriateness for replacement of the roof on a residential property at **534 Pembroke Avenue** and located in a Historic District," was introduced in writing and read by its title.

Lenny Newcombe, Assistant Planning Director, provided a background summary of this above item.

Richard Ottinger, applicant, 534 Pembroke Avenue, spoke in favor of this matter.

Greta Gustavson, 421 W. Bute Street, and Chair of the Architectural Review Board, spoke in opposition to this matter.

Robin Ingram, 540 Pembroke Avenue, spoke in favor of this matter.

The following were present in support of this matter but did not wish to speak: Jeff Cooper, 804 Botetourt Gardens, Terri Kircher and Marcellus Kircher, 721 Colonial Avenue, William Ingram, 540 Pembroke Avenue, Linwood Beckner, 296 College Place, Mel Price, 208 E. Plume Street Rachel Spruill, 1348 Bayonne Street, and Edward Kimple, 1014 Magnolia Avenue Beach.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: Riddick and Whibley

R-4 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting a Granby Development Certificate to permit the renovation of an existing warehouse to provide residential dwelling units on property located at **210 East 22nd Street**," was introduced in writing and read by its title.

Grady Palmer, 999 Waterside Drive, was present to answer questions in this matter.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-5 Letter from the City Manager and an Ordinance entitled, "An Ordinance to approve and adopt a schedule of fees related to the cost of implementing and enforcing the **Uniform Statewide Building Code**," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective July 5, 2016.

Yes: Graves, Johnson, Riddick, Protogyrou, 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 an automobile storage yard for "DAC Warehouse, LLC" on property located at **429 West 24th Street**," was introduced in writing and read by its title.

Mel Price, 208 E. Plume Street was present to answer questions in this matter.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-7 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 "Starbucks" on property located at **7600 Hampton Boulevard,**" was introduced in writing and read by its title.

Thomas C. Kleine, 222 Central Park Avenue, #200, Virginia Beach and Steve Blevins, 770 Independence Circle, Virginia Beach, were present to answer questions.

The following were present in support of this matter but did not wish to speak: Raymond Hicks, 2529 Virginia Beach Boulevard, #200, Virginia Beach, Denbeigh Marchant, 2529 Virginia Beach Boulevard, #200, Virginia Beach, Rachel Spruill, 1348 Bayonne Street, David Machupa, 222 Central Park Avenue, Virginia Beach and Edward Kimple, 1014 Magnolia Avenue.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-8 Letter from the City Manager and the following three Ordinances:

An Ordinance entitled, "An Ordinance granting a Special Exception to permit a commercial drive-through for "Starbucks" on property located at **2000 Colonial Avenue, Unit 12,**" was introduced in writing and read by its title.

Robyn Thomas, 913 W. 21st Street and Joe Bushey, 4500 Main Street, Virginia Beach, and Kristen Tynch, 4500 Main Street, Virginia Beach, were present to answer questions.

Jack Plomgren, 332 Laskin Road, Virginia Beach, spoke in favor of this matter.

The following were present in support of this matter but did not wish to speak: Linwood Beckner, 296 College Place, John Cooper, 1117 Buckingham Avenue, Angel Chen, 2000 Colonial Avenue, Dave McDonald, 424 21st Street, Eric Cooper, 414 Brackenridge Avenue, Jeff Cooper, 804 Botetourt Gardens, Joe Haskell, 3325 East Ocean View Avenue, Margie

Tekamp, 327 Fairfax Avenue, Linda Staehling, 555 E. Main Street, Terri and Marcellus Kirchner, 721 Colonial Avenue, Geoffrey Poston, 1635 Ashland Avenue, Andrew Stein, 999 Waterside Drive, Jim Hurley, 2014 Granby Street, #2000, Monica Cooper, 1117 Buckingham Avenue, Mary Yelinek, 3760 Clinia Drive, Virginia Beach, Camille Cooper, 1117 Buckingham Avenue, Allan Stein, 110 A. 87th Street, Virginia Beach, Eric Stanley, 222 Central Park, Virginia Beach, George Vick, 5445 Warren Crescent, Charles Cooper, 7339 Barbarry Lane, Edward Kaufman, 530 Raleigh Avenue, Allison Cooper, 804 Botetourt Gardens, Wick Smith, 934 Larchmont Crescent, Cynthia Vazquez, 825 Monticello Court, Richard Ottinger, 534 Pembroke Avenue, Hugh Tierney, 731 9th Street, Virginia Beach, Matthew Fine, 130 W. Belvedere Road, Hannah Cooper, 414 Brackenridge Avenue, Betsy Cooper, 414 Brackenridge Avenue, Edward Kimple, 1014 Magnolia Avenue, Denbeigh Marchant, 2529 Virginia Beach Boulevard, Raymond Hicks, 2529 Virginia Beach Boulevard, Rachel Spruill, 1348 Bayonne Street, and David, Machupa, 222 Central Park Avenue, Virginia Beach.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-8A An Ordinance entitled, "An Ordinance granting a Pedestrian Commercial Overlay District Development Certificate to permit the construction of a new retail sales and eating establishment on property located at **2000 Colonial Avenue, Unit 12**," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-8B An Ordinance entitled, "An Ordinance vacating a portion of a building line situated on the north side of **West 20th Street between Colonial Avenue and Debree Avenue,**" was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-9 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting a Special Exception authorizing the sale of alcoholic beverages for off-premises consumption at an establishment known as "Elixia" on property located at **257 Granby Street,**" was introduced in writing and read by its title.

Rick Henn, 1400 Granby Street, representing the applicant, was present to answer questions.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-10 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting a Special Exception to permit the operation of an automobile repair facility on property located at **5880 to 5888 Poplar Hall Drive,**" was introduced in writing and read by its title.

C.E. Forehand, 219 Sir Oliver Road, was present to answer questions.

Ellis James, 2021 Kenlake Place, spoke in opposition to this matter.

Daniel Frishkorn, 803 Wilbur Avenue, Chesapeake was present in favor of this matter but did not wish to speak.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-11 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting a Special Exception to permit the construction of a communication tower (commercial) on property located at **5880 to 5888 Poplar Hall Drive**," was introduced in writing and read by its title.

C.E. Forehand, 219 Sir Oliver Road, was present to answer questions.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: Riddick.

R-12 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting a Special Exception to operate a used merchandise sales establishment named "Salvation Army Family Store" on property located at **2340 East Little Creek Road**" was introduced in writing and read by its title.

The following spoke in support of this matter, R.G. Nutter, 222 Central Park Avenue, Major Stephen Long, 5525 Raby Road, Captain Dwayne Burleigh, 1036 Minden Road, Virginia Beach, Denbeigh Marchant, 2529 Virginia Beach Boulevard, #200, Jason Shedlock, 316 E. Farmington Road, Virginia Beach, Eric Fernandez, 5725 W. Hastings Arch, Virginia Beach, David Brady, 5836 Newtown Arch, #102, Virginia Beach, and Michael Shahan, President of Bel-Air Civic League, 8021 Buffalo Avenue.

Joe Lowrey, 2148 Helsley Avenue, John C. Marshall, 1871 Banning Road, and Kathleen Libert, 8041 Wedgewood Drive, spoke in opposition to this matter.

The following were present in support of this matter but did not speak, Michael Myers, 440 Monticello, Kevin Baringer, 2300 E. Little Creek Road, Raymond Hicks, 2529 Virginia Beach Boulevard, #200, Andrew Stein, 999 Waterside Drive, #1400, Eric Cooper, 4114 Brackenridge Avenue, Eric Stanley, 222 Central Park, Virginia Beach, Rachel Spruill, 1348 Bayonne Street, David, Machupa, 222 Central Park Avenue, Virginia Beach and Edward Kimple, 1014 Magnolia Avenue.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: Smigiel and Whibley.

Following the vote, Vice Mayor Angelia Williams Graves, departed the meeting.

R-13 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting a Special Exception authorizing the operation of an eating and drinking establishment known as "Little Dog Diner" on property located at **1917 Colley Avenue**," was introduced in writing and read by its title.

Mike Basham, 304 Butrico Road, Chesapeake, was present to answer questions.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-14 Letter from the City Manager and an Ordinance entitled, "An Ordinance authorizing the amendment of the **Revolving Loan Fund Plan**, as approved by the United States Department of Commerce Economic Development Administration, authorizing the Cooperation Agreement to be entered into with the Economic Development Authority, and, appropriating and authorizing the expenditure of up to $625,000.00 in Grant Funds in furtherance of the Norfolk Revolving Loan Fund Plan dated October 2015," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-15 Letter from the City Manager and a Resolution entitled, "A Resolution approving the formation of legal entities by the Norfolk Redevelopment and Housing Authority to facilitate the renovation of the **Young Terrace and Diggs Town Communities**," was introduced in writing and read by its title.

Steve Morales, Norfolk Revelopment and Housing Authority, was present to answer questions.

ACTION: Continued to July 12, 2016.

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

No: None.

R-16 Letter from the City Manager and an Ordinance entitled, "An Ordinance permitting **749 Boush Street, LLC** to encroach into the right-of-way of **Boush Street and Grace Street** with an underground footer and concrete flood wall" was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-17 Letter from the City Manager and an Ordinance entitled, "An Ordinance permitting **Virginia Natural Gas** to encroach into the right-of-way of **Lance Road** with an overhead canopy," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-18 Letter from the City Manager and an Ordinance entitled, "An Ordinance permitting **Richard and Judy Levin** to encroach into the right-of-way at **240 W. 21st Street** with a canopy, sign, pilasters, capitals, window trim and lighting," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-19 Letter from the City Manager and an Ordinance entitled, "An Ordinance granting Blue Marble and Sun, LLC permission to encroach into the right-of-way at **9659 First View Street** approximately 187 square feet for the purposes 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 June 14, 2016.

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

No: None.

R-20 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 Commonwealth of Virginia, Department of Transportation and Corman-E.V. Williams, a joint venture, for work related to the **Virginia Department of Transportation Military Highway Continuous Flow Intersection Project**," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-21 Letter from the City Manager and an Ordinance entitled, "An Ordinance approving a License Agreement with the **Western Tidewater Water Authority** for the operation and maintenance of a raw water main across City of Norfolk property located in the City of Suffolk," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-22 Letter from the City Manager and an Ordinance entitled, "An Ordinance finding a public necessity for the acquisition in fee simple of certain property located at **312 and 314 Brockwell Avenue** for the purpose of construction of a retention pond; approving the acquisition of the property by Purchase Agreement or Condemnation; and authorizing the expenditure of a sum of up to $46,000.00 from funds heretofore appropriated for acquisition of the property and all related transactional costs," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-23 Letter from the City Manager and an Ordinance entitled, "An Ordinance approving a **Nonexclusive Telecommunications Franchise Agreement** with Mobilite, LLC," was introduced in writing and read by its title.

Bich Tran, 925 B. Peachtree Street, N.E. Suite 710, Atlanta, Georgia, was present to answer questions.

ACTION: The Ordinance as introduced was **adopted**, effective July 15, 2016.

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

No: None.

R-24 Letter from the City Manager and an Ordinance entitled, "An Ordinance accepting with appreciation the donation of $5,710 to the City from the **Hampton Roads Community Foundation** and appropriating and authorizing the use of the funds to support **Library Services and Programs**," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-25 Letter from the City Manager and an Ordinance entitled, "An Ordinance permitting **Norfolk Outlets, LLC** to encroach into the right-of-way of **Northampton Boulevard and Miller Store Road** with signage," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-26 Letter from the City Manager and an Ordinance entitled, "An Ordinance permitting Jack Mavromatis, Jr., Louis Mavromatis and Helen Christie to encroach into the right-of-way at **117 W. 21st Street** with signage and an awning," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-27 Letter from the City Manager and an Ordinance entitled, "An Ordinance to repeal Sections 16-177 to 16-184 of the *Norfolk City Code, 1979* **SO AS TO** dissolve the Norfolk Municipal Bond Commission," was introduced in writing and read by its title.

Ellis James, 2021 Kenlake Place, spoke in favor of this matter.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-28 Letter from the City Attorney and an Ordinance entitled, "An Ordinance directing the City Treasurer to issue a refund in the amount of $2,547.25, plus interest **to Zahn Court Reporting, Limited** based upon the overpayment of its **Business License Tax for the year 2016**," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-29 Letter from the City Attorney and an Ordinance entitled, "An Ordinance to schedule the starting time of the **organizational city council meeting** at 2:00 p.m., **Friday, July 1, 2016** in the Council Chamber," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-30 Letter from the City Manager and an Ordinance entitled, "An Ordinance authorizing the City Manager to enter into a **Cooperation Agreement with the Economic Development Authority,**" was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: None.

R-31 An Ordinance entitled, "An Ordinance to repeal Section 6-100 of the *Norfolk City Code, 1979*, **SO AS TO** dissolve the Animal Advisory Board," was introduced in writing and read by its title.

ACTION: The Ordinance as introduced was **adopted**, effective June 14, 2016.

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

No: Protogyrou.

R-32 A Resolution entitled, "A Resolution appointing 3 persons to two Authorities for certain terms," was introduced in writing and read by its title.

ACTION: The Resolution as introduced was **adopted**, effective June 14, 2016.

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

No: None.

NEW BUSINESS

1. Tanterrian Taylor, 5920 Poplar Hall Drive, #E304, asked the council to address the following 5 issues: 1) a stop block at the fire station on Poplar Hall Drive; 2) speed awareness devices on Poplar Hall Drive; 3) fix the sink hole at 5870 Military Highway; 4) clean up the trash at Military Crossing; and 5) VDOT's CFI Project plan for 2038 needs to include a pedestrian cross walk.

2. Bill Cook, 2720 Marlboro Avenue, expressed concern about crime and violence in the City and that our youth deserve to live in a safe community.

3. Reverend Glen Jones, 2501 Kennon Avenue, asked if the Mayor had the wellbeing of the citizens of Norfolk or African Americans in mind when he voted on past projects and contracts.

4. Danny Lee Ginn, 3844 Dare Circle, stated it was his 70th birthday.

THE CITY OF NORFOLK
CITY PLANNING

MEMORANDUM

TO:	City Council
THROUGH:	Marcus D. Jones, City Manager
FROM:	George M. Homewood, FAICP, CFM, Planning Director
COPIES TO:	City Attorney, City Clerk
SUBJECT:	Pending Land Use Actions
DATE:	June 24, 2016

Attached for your review is the Pending Land Use Report, identifying applications received from June 8, 2016 through June 21, 2016. The report reflects items that are tentatively scheduled to be heard at the July 11, 2016 Architectural Review Board and the July 28 and August 25, 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 – July 11, 2016

Number	Applicant	Location	Request	Ward	SW	Neighborhood
1A	Kevin Erskine	760 W 22nd Street	Outdoor dining encroachment	2	6	n/a
2A	City of Norfolk	Lafayette Boulevard	Two neighborhood signs & new landscaped boulevard	3	7	Fairmount Park
3A	Richard Yarow	624 Boissevain Avenue	Re-establish front porch	2	6	Ghent
4A	Robyn Thomas	323 Granby Street	Renovate entrance	2	6	Downtown

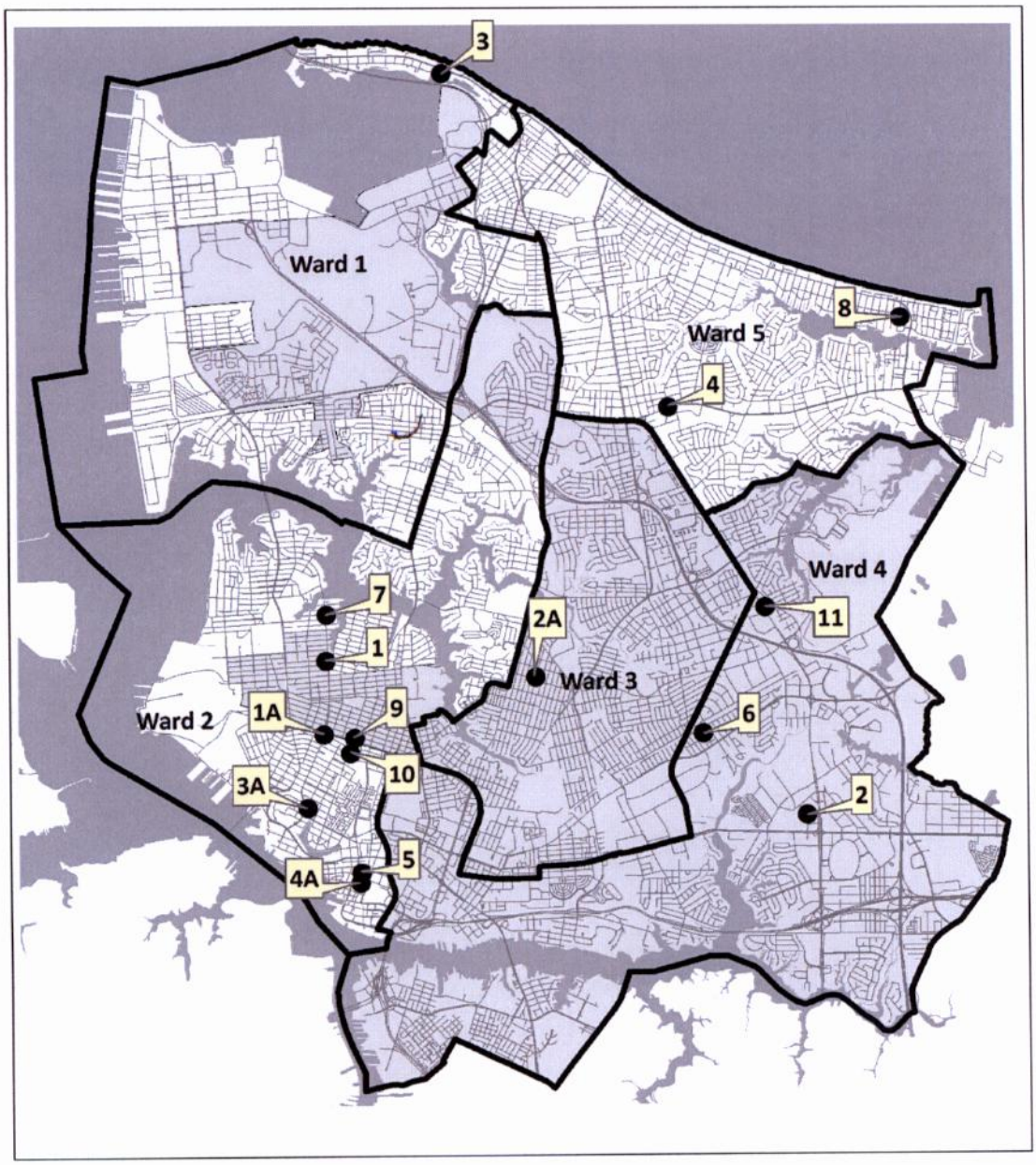
City Planning Commission – July 28, 2016

Number	Applicant	Location	Request	Ward	SW	Neighborhood
1	Howerin Construction Corp.	4013 Colley Avenue	Special exception for mixed uses.	2	7	Highland Park
2	Chipotle Mexican Grill	1081 N Military Highway	Special exception to operate an eating and drinking establishment	4	7	N/A
3	Timothy M. Massey	Willoughby Bay Avenue	Street closure	1	6	Willoughby
4	Wendy's	1380 E Little Creek Road	Special exception to operate a commercial drive-through	5	6	Bel-Aire
5	Casa Luna Mexican Restaurant	411 Granby Street, Suite 10	Special exception to operate an entertainment establishment with alcoholic beverages	2	6	Downtown
6	New Horizon Outreach Ministries	1555-575 Kerrey Avenue	• Special exception to operate a day care home • Special exception for a religious institution	4	7	Fox Hall
7	C.L.F. Creations, LLC	4914 Colley Avenue	Special exception for mixed uses	2	6	Highland Park

8	NRHA	9574 21st Bay Street	Change of zoning from R-12 (Medium Density Multi-Family) to C-3 (Retail Center) district	5	6	East Ocean View
9	LOVEnorfolk	426 W 23rd Street	Special exception to operate an eating and drinking establishment	2	7	Park Place
10	Bardo	434 W 21st Street	Special exception to operate an eating and drinking establishment	2	6	Ghent

City Planning Commission – August 25, 2016

Number	Applicant	Location	Request	Ward	SW	Neighborhood
11	Priority Ford	3416 N Military Highway	Special exception to operate an auto sales and service establishment	4	7	Idlewood/ Sandy Heights



Pending Land Use Actions
JUNE 8 - JUNE 21

0 4,000 8,000 16,000 Feet

Superwards
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This map is for graphic purposes only.

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

CITY OF NORFOLK
OFFICE OF THE MAYOR

PAUL D. FRAIM
MAYOR

June 24, 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., June 28, 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

June 24, 2016

The following meetings will take place on Tuesday, June 28, 2016:

1. 4:30 P.M. Health, Education & Families (HEF), 10th floor conference room at City Hall.

2. 5:00 P.M. Council to assemble in the 10th floor conference room at City Hall for a Business Meeting.

3. 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, JUNE 28, 2016 – 7:00 P.M.

Prayer to be offered by Vice Mayor Angelia Williams Graves, 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**.

(A request has been made to continue to August 23, 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, on the application of the **City of Norfolk**, to modify the Table of Contents within with City's General Plan, *plaNorfolk2030,* to add the *City of Norfolk Sand Management Plan* and to incorporate the Sand Management Plan by reference within Appendix B of *plaNorfolk2030.*

PH-3 **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 the **City of Norfolk,** to amend the future land use designation in the General Plan, *plaNorfolk2030*, from Institutional to Office and for a change of zoning from IN-1 (Institutional) to BC-1 (Business and Commerce Park) District on property located at **900-901 Asbury Avenue**.

PH-4 **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 **Richard Levin,** to change the zoning from C-2 (Corridor Commercial), Pedestrian Commercial Overlay – Riverview (PCO-Riverview) and R-8 (Single-Family) Districts to Conditional C-2 and Pedestrian Commercial Overlay – Riverview Districts on properties now or formally known as **3920 Granby Street and 3917 Columbus Avenue**.

PH-5 **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 **Commonwealth Preservation Group,** to designate the existing structure at **6651 Talbot Hall Court** as a Norfolk Historic Landmark.

PH-6 **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 the **City Planning Commission,** for a zoning text amendment to **Section 14-4.2**, "Festivals, bazaars, outdoor sale events, carnivals and circuses," of the *Zoning Ordinance* to increase the number of days allowed for such temporary events within the Pedestrian Commercial Overlay Districts.

PH-7 **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 **Norfolk Redevelopment and Housing Authority,** for the closing, vacating and discontinuing a portion of **May Avenue**, between **East Virginia Beach Boulevard** and **Booth Street** to the south of **East Virginia Beach Boulevard**, between **May Avenue** and **Cecelia Street**.

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 granting an exemption from real estate taxes by classification for real property of **Old Dominion Real Estate Foundation**.

PH-9 **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 granting an exemption from real estate taxes for real property of **First Baptist Church, Berkley and/or Trustees of First Baptist Church, Berkley** retroactive to September, 2010.

PH-10 **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 DPT Construction, LLC of certain parcels of property located at **1301 and 1303 Wilson Road**.

PH-11 **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 Balance Builders, Inc. of certain parcels of property located at **2600 and 2604 Campbell Avenue**.

PH-12 **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 the Virginia Historic Restoration Foundation of property located at **227 West Freemason Street, and 334 Duke Street**.

PH-13 **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 real property located at **6000 Northampton Boulevard**.

REGULAR AGENDA

R-1 Letter from the City Manager and an Ordinance entitled, "An Ordinance authorizing the City Manager to enter into a **Cooperation Agreement** with the **Economic Development Authority** of the **City of Norfolk**," will be introduced in writing and read by its title.

R-2 Letter from the City Manager and an Ordinance entitled, "An Ordinance accepting $18,877 from the **Virginia Department of Criminal Justice Services** for the **Juvenile Accountability Block Grant Program**, appropriating and authorizing the expenditure of the funds and $2,097 in local cash matching funds for the **Program** for total **Program** funding in the amount of $20,974," will be introduced in writing and read by its title.

R-3 Letter from the City Manager and an Ordinance entitled, "An Ordinance to amend and reordain the **Norfolk City Code, 1979 SO AS TO** add one new section numbered **12-141.6**, relating to the creation of 111 graves in the re-subdivision of **Section 26-A**, in a portion south of existing **Block 26, Calvary Cemetery Annex**," will be introduced in writing and read by its title.

R-4 Letter from the City Manager and an Ordinance entitled, "An Ordinance permitting the **Palace Shops South, LLC** to encroach into the right-of-way at **328 West 20th Street** with lights and signage," will be introduced in writing and read by its title.

R-5 Letter from the City Manager and an Ordinance entitled, "An Ordinance approving a right of entry permitting the **New Hope Church of God in Christ** to go upon and use that certain City owned property numbered and designated as **616, 618,** and **620 West 35th Street**," will be introduced in writing and read by its title.

R-6 Letter from the City Manager and an Ordinance entitled, "An Ordinance accepting $52,074.00 in additional grant funding from the **Virginia Department of Criminal Justice Services** for the continuation of the **FY16 Victim/Witness Assistance Program**, appropriating and authorizing the expenditure of the additional grant funds for the program and authorizing the hiring of one (1) additional person for the program in a **Special Project** employment status," will be introduced in writing and read by its title.

R-7 Letter from the City Attorney and an Ordinance entitled, "An Ordinance designating **Philpotts Road** as **Walter H. Green, Sr. Road**," 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

June 17, 2016

PH-1

City of Norfolk

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

Dear Officer:

Please continue the rezoning application for June 28 , 2016 to the Aug 23, 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., Department of City Planning

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

June 28, 2016

From: George M. Homewood, FAICP CFM, Planning Director

Subject: **Adoption of the *Sand Management Plan Guidance Document* by reference in *plaNorfolk2030* and amend the *Norfolk City Code*, 1979, to establish a Coastal Management and Review Board**

Reviewed: Ronald H. Williams, Jr., Deputy City Manager

Ward/Superward: 1,5/6

Approved: Marcus D. Jones, City Manager

Item Number: **PH-2**

I. **Staff Recommendation:** **Approval**

II. **Commission Action:** By a vote of **7 to 0**, the Planning Commission recommends **Approval**

III. **Request:** Adopt the *Sand Management Plan (SMP) Guidance Document* by reference in *plaNorfolk2030* and modify the Table of Contents and actions

IV. **Applicant:** City of Norfolk

V. **Description:**

- The beaches, coastal primary sand dunes, and sand along the Chesapeake Bay in Norfolk are an essential natural resource that benefit from being managed in a proactive, consistent, and comprehensive manner.
- Norfolk therefore will be enhanced by a comprehensive plan to manage these resources in a manner that maintains or improves on the ability of the dunes to protect properties from bay flooding, wave erosion, and surge overtopping.
- Norfolk City Council established a Sand, Beach and Dune Management Advisory Committee in December 2014 to develop such a plan.
- The Committee was comprised of property owners, neighborhood representatives, City staff from the Departments of Public Works and City Planning, coastal engineers, and representatives from the United States Army Corps of Engineers, the Virginia Marine Resources Commission and the Virginia Institute of Marine Science.
- The SMP that has been drafted by the Sand, Beach and Dune Management Committee establishes processes and standards that meet these goals, defining a proposed methodology to manage sand movement for the different portions of the Ocean View shoreline which require different management techniques.

- The Plan further creates a Coastal Management and Review Board (CMRB) to review as well as address issues, and to be available and responsible to citizens.
- Norfolk City Council on April 12, 2016 approved Resolution 1,637 directing the City Planning Commission amend *plaNorfolk2030* to adopt and incorporate the new *Sand Management Plan (SMP) Guidance Document.*

VI. Staff point of contact: Jeffrey Raliski at 664-4766, jeffrey.raliski@norfolk.gov

Attachments:

- Ordinance
- Staff Report to CPC dated May 26, 2016 with attachments
- Proposed text
- *Sand Management Plan Guidance Document*
- City Council Resolution 1,637 – Approved April 12, 2016
- Ocean View Sand Dune and Beach Advisory Committee Letter – April 5, 2016
- Proponents and Opponents

THE CITY OF NORFOLK
CITY PLANNING

Planning Commission Public Hearing: May 26, 2016

Executive Secretary: George M. Homewood, FAICP, CFM

Staff: Jeffrey K. Raliski, AICP

Staff Report	**Item No. 2**	
Applicant	**Norfolk City Council**	
Request	**General Plan Amendment**	**Adopt the *Sand Management Plan (SMP) Guidance Document* by reference in *plaNorfolk2030* and modify the Table of Contents and actions**

A. Summary of Request

- The beaches, coastal primary sand dunes, and sand along the Chesapeake Bay in Norfolk are an essential natural resource that benefit from being managed in a proactive, consistent, and comprehensive manner.
- Norfolk therefore will be enhanced by a comprehensive plan to manage these resources in a manner that maintains or improves on the ability of the dunes to protect properties from bay flooding, wave erosion, and surge overtopping.
- Other principal benefits of an active sand management program include minimizing inundation of areas behind dune crests by accumulation of wind-blown sand, maintaining sand reservoirs, the stability of the shore, and the sandy upland, maintaining and improving public access to the beach, and maintaining or restoring water views.
- Norfolk City Council established a Sand, Beach and Dune Management Advisory Committee in December 2014 to develop such a plan.
- The Committee was comprised of property owners, neighborhood representatives, City staff from the Departments of Public Works and City Planning, coastal engineers, and representatives from the United States Army Corps of Engineers, the Virginia Marine Resources Commission and the Virginia Institute of Marine Science.
- The SMP that has been drafted by the Sand, Beach and Dune Management Committee establishes processes and standards that meet these goals, defining a proposed methodology to manage sand movement for the different portions of the Ocean View shoreline which require different management techniques.
- The Plan further creates a Coastal Management and Review Board (CMRB) to review as well as address issues, and to be available and responsible to citizens.
- Implementation of the Plan on Norfolk owned beaches and property will be provided by the City with input and review from the CMRB.
- The Committee recommends that the Plan be a working, living document that can be modified over time as needed and appropriate.
- The Plan also anticipates the need for new or supplemental funding for some sand management activities.

- The City of Norfolk Proposed Capital Improvement Budget for Fiscal Years 2017-2021 includes $4.775M in funding support for beach replenishment and sand management activities.
- Norfolk City Council on April 12, 2016 approved Resolution 1,637 directing the City Planning Commission amend *plaNorfolk2030* to adopt and incorporate the new *Sand Management Plan (SMP) Guidance Document.*

B. Plan Consistency

- Development of the *Norfolk Sand Management Plan Guidance Document* is consistent with *plaNorfolk2030.*
- The proposed amendments are in keeping with the Planning Department's efforts to update *plaNorfolk2030* to adequately reflect policy changes or additions.

C. Communication Outreach/Notification

Legal notification was placed in *The Virginian-Pilot* on May 12 and May 19.

D. Recommendation

Staff recommends that the amendment to *plaNorfolk2030* request be **approved.**

Attachments:

Proposed text
Sand Management Plan Guidance Document
City Council Resolution 1,637 – Approved April 12, 2016
Ocean View Sand Dune and Beach Advisory Committee Letter – April 5, 2016

Proposed plaNorfolk2030 Amendments to adopt the "Sand Management Plan Guidance Document"
(additions underlined and removal in strike-throughs)

1. Adopt "Sand Management Plan Guidance Document" by reference into plaNorfolk2030.

2. Modify the following in the Table of Contents:

   Appendix B. Adopted Plans, Policies and Supplements
   - City of Norfolk Chesapeake Bay Preservation Area Program Supplement
   - City of Norfolk Bicycle and Pedestrian Strategic Plan
   - Complete Streets Policy
   - Sand Management Plan (SMP) Guidance Document

3. Modify the following actions:

   Action ES1.3.7 Implement the Sand Management Plan (SMP) Guidance Document (Appendix B) to promote sand dune and beach stability, functionality, and resiliency while promoting the economic vitality and ecological resiliency of the Ocean View urban beach community and recognizing that the bayfront has a variety of distinct physical and geographic characteristics, each with unique preservation and maintenance issues.

   Action ES1.3.8~~7~~. Ensure that former waste disposal sites are safe while continuing to explore suitable reuse options.

   Action ES1.3.9~~8~~. Support the recruitment and expansion of "Green" businesses and manufacturers (see the Enhancing Economic Vitality chapter).

4. Modify the implementation table as follows:

IMPLEMENTATION ITEM		ACTION	LEAD RESPONSIBILITY	TIMEFRAME FOR COMPLETION	COST CATEGORY	COMMENTS
Environmental Sustainability Goal 1. Ensure high quality natural resources.						
Outcome ES1.3. An ecosystem that supports a diversity of plant and animal life.	ES1.3.7	Implement the Sand Management Plan (SMP) Guidance Document (Appendix B) to promote sand dune and beach stability, functionality, and resiliency while promoting the economic vitality and ecological resiliency of the Ocean View urban beach community and recognizing that the bayfront has a variety of distinct physical and geographic characteristics, each with unique preservation and maintenance issues.	PW	Ongoing	Over $1 Million	

PROPONENTS

Vic Yurkuvic
1816 E Ocean View Avenue
Norfolk VA 23503

Thelma Drake
2306 Bay Oaks Place
Norfolk VA 23518

Catherine Ford
1838 E Ocean View Avenue
Norfolk VA 23503

Charlene Brassington
1820 E Ocean View Avenue
Norfolk VA 23503

Kenneth Paulson
2071 E Ocean View Avenue
Norfolk VA 23503

Dean Brassington
1820 E Ocean View Avenue
Norfolk VA 23503

OPPONENTS

None

05/24/2016 lds

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT.

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE TO AMEND THE CITY'S GENERAL PLAN, PLANORFOLK2030, SO AS TO ADOPT AND INCORPORATE THE "SAND MANAGEMENT PLAN."

- - -

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

Section 1:- That the "City of Norfolk, Sand Management Plan" is hereby adopted and made part of the general plan of Norfolk, plaNorfolk2030.

Section 2:- That the general plan, plaNorfolk2030, is hereby amended so as to incorporate said Sand Management Plan, attached hereto and marked as "Exhibit A," and the changes to be made to plaNorfolk2030 are as follow:

(a) Modify the Table of Contents to change "Appendix B" to read as follows:

Appendix B. Plans, Policies and Supplements
City of Norfolk Chesapeake Bay Preservation Area Program Supplement
City of Norfolk Bicycle and Pedestrian Strategic Plan
Complete Streets Policy
City of Norfolk, Sand Management Plan

(b) In Chapter 6, add a new action, to be enumerated as Action ES1.3.7, that reads as follows:

Action ES1.3.7 Implement the Sand Management Plan (SMP) Guidance Document (Appendix B) to promote sand dune and beach stability, functionality, and resiliency while promoting the economic vitality and ecological resiliency of the Ocean View urban beach community and recognizing that the bayfront has a variety of distinct physical and geographic characteristics, each with unique preservation and maintenance issues.

(c) In Chapter 6, renumber existing Action ES1.3.7 to be new Action ES1.3.8, and renumber existing Action ES 1.3.8 to be new Action ES1.3.9.

(d) In Chapter 13, "Implementing plaNorfolk2030," amend the table to include the information shown in the exhibit attached hereto and marked as "Exhibit B."

Section 2:- The Council hereby finds that this zoning 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.

ATTACHMENTS:
Exhibit A (27 pages)
Exhibit B (1 page)

Exhibit A

City of Norfolk

Sand Management Plan (SMP)

Guidance Document

A comprehensive guide to sand management criteria within the City of Norfolk's Ocean View Bayfront Area

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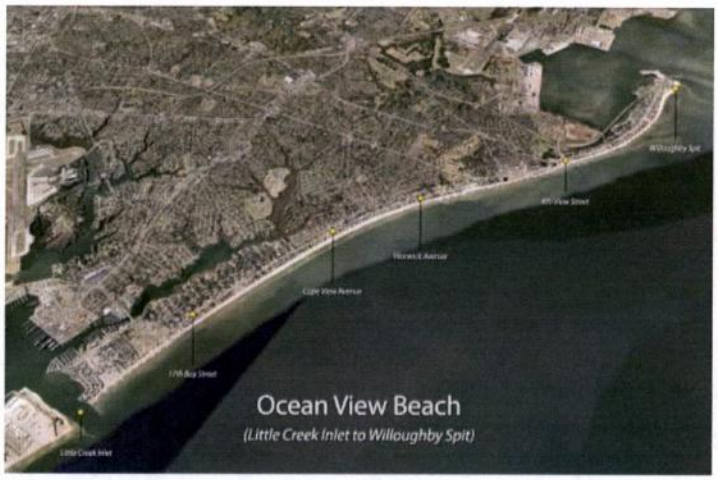
1. Introduction

This document was prepared by the Ocean View Sand Dune and Beach Advisory Committee, established by the City of Norfolk in December 2014, to provide guidance and a long-term strategy for dealing with sand and dune issues along the Chesapeake Bay shoreline. The Committee was formed by the Norfolk City Council as a result of increasing issues regarding erosion, accretion, transport, and encroachment of sand along the Ocean View Bayfront. The Sand Management Plan (SMP) supplements the Chesapeake Bay Coastal Management Area (CBCMA) guidance document, which deals with regulations governing structures and permitted items on the beaches and primary frontal sand dunes along the Chesapeake Bay.

This SMP recognizes that the dune-beach system varies along the Norfolk Ocean View Bayfront both physically and temporally. The combinations of topography, existing dune profile, and sand transport conditions define five different areas along the 7.3 mile beach in the Norfolk Ocean View Bayfront. The five areas are approximately defined as follows:



- East Beach and Vicinity (Little Creek Inlet to 14th Bay Street)
- East Ocean View Area (14th Bay Street to Cape View Avenue)
- Cottage Line Area (Cape View Avenue to Warwick Avenue)
- Central Ocean View Area (Warwick Avenue to 4th View Street)
- Willoughby Spit (4th View Street to the tip of Willoughby Spit)

2. Executive Summary

This SMP is intended to promote sand dune and beach stability, functionality, and resiliency consistent with local, state, and federal laws and regulations. It is based on current science and monitoring of the specific shoreline environment along Norfolk's Ocean View Bayfront and utilizes guidelines and procedures designed in conjunction with the provisions of law applicable to the protection of coastal dunes and beaches as well as the various benefits and utility they provide. Criteria, standards, and guidance are also provided to define the goals, standards, and processes relating to sand and dune management activities on both public and private property. The SMP is not intended to resolve, nor even address, any aspect of ownership of the dune and beach areas it discusses. While some activities and processes set out in the SMP vary depending on whether the subject area is on public or private land, the plan itself contains no provisions for determining what land is public and what land is private.

The Ocean View Sand, Dune, and Beach Advisory Committee, established by the City of Norfolk in 2014 and made up of local civic league presidents, City staff, government agency representatives, residents, and technical advisors, has advanced this document to guide sand management activities along the Bayfront.

The Ocean View Bayfront is a thriving urban beach community. The protection and amenities that are provided by a healthy and robust beach and dune system directly contribute to the quality of life and the sustainability and enhancement of properties. To promote this vision, the committee has adopted the following guiding principles for sand management:

a. Optimize and promote the economic value, vitality, and ecological resilience of the Norfolk Ocean View Bayfront shoreline environment as an urban beach community.

b. Recognize that the Norfolk Ocean View Bayfront shoreline has a variety of distinct physical and geographical reaches with unique characteristics and issues that affect preservation and maintenance.

c. Involve residents as active partners in the formulation and administration of the SMP so as to promote compatibility between the private enjoyment and public protection and resilience and the general recreational use of all Bayfront areas.

d. Formulate and execute a dynamic and useful plan to ensure sand and dune stability and functionality by adopting processes that:

    1) Utilize, where appropriate, vegetation and sand fencing to retain sand in the dune system and mitigate sand encroachment or movement landward;

    2) Define functionally, appropriate dune crest heights and slopes along the different areas of the shoreline;

    3) Promote dune robustness that meets or exceeds FEMA primary frontal dune volume criteria; and

    4) Ensure sand encroachment and/or dune migration does not result in relocation of the landward toe of the primary frontal dune, such that it alters the FEMA flood zone boundary and changes the flood zone designation.

The objectives of the SMP, listed in order of decreasing priority, are:

a. To maintain or improve on the ability of the primary frontal dune to protect properties from bay flooding, wave erosion, and surge overtopping;

b. To minimize inundation of areas behind the primary frontal dune crest by accumulation of wind-blown sand;

c. To maintain sand reservoirs, the stability of the shore, and the sandy upland;

d. To maintain and improve public access to the beach; and

e. To maintain or restore water views, to the extent possible, in conjunction with advancing one or more of the other priorities listed.

All activities that impact the dunes are subject to the provisions of Virginia's Coastal Primary Sand Dune Protection Act (Virginia Code Title 28.2, Chapter 14). In additional to establishing goals and standards for management activities, this SMP clearly defines what processes govern activities that are undertaken on publically-owned property, including those that are exempt from the permit requirement of the Dune Protection Act. Activities on privately-owned property are subject to fewer exemptions from that permit process. As a result, some of the tools available for management activities on public property will not be available on private property unless they are approved by permit under the Dune Protection Act. This SMP is intended to encompass all aspects of the City's policies and procedures related to sand management. As a result, once this SMP is adopted the City Council may elect to relinquish local control over any activity that can only be authorized by grant of a permit required by the Dune Protection Act. Thereafter, permit applications would be filed directly with the Virginia Marine Resources Commission and any violation of the Dune Protection Act shall be prosecuted by the Commission, as required by in Virginia Code § 28.2-1416.

A determination that a sand management activity is consistent with this SMP and does not require a Dune Protection Act permit is not an indication that no other permits or approvals are required. Some activities require approvals in addition to the processes and compliance standards established in the SMP. All requirements of state and federal law supersede this SMP.

The implementation of the SMP also provides an opportunity for cooperation between City staff and residents and includes many elements intended to further such cooperation, enhance education for residents, and provide increased data and documentation relative to the dynamic beach environment. This data can be used to further the SMP objectives, optimize beach management activities, and improve the quality of the coastal environment.

Such engagement can take many forms. A volunteer task force can assist planting and maintenance projects to supplement what can be accomplished by City staff and contractors working for the City. Maintenance could include dune plant care and replacement, invasive plant identification or removal, beach access-way sand management, and sand fence maintenance. A regular monitoring program of the dune-beach system is an integral part of the comprehensive SMP and should include, at a minimum, continuing the current semi-annual sand movement monitoring by the City of Norfolk and resident feedback on encroachment problems. An ongoing Coastal Management and Review Board (CMRB) will be established, to meet semi-annually and at other appointed times, to review data, assess progress, recommend adjustments to the SMP, and recommend significant projects to be undertaken in a manner consistent with the goals and objectives of the SMP.

Such cooperative activities are consistent with the City's objective to increase resilience and provide opportunities for many types of recognition and pilot programs. Public outreach can be promoted by the attendance of a representative of one of the cooperating agencies at local Civic League meetings as well as by submitting local press releases about projects and goals.

The following sections provide specific tools and procedures for implementing best practices regarding dune vegetation, fencing, maintaining the dunes, relocating encroaching sand, replenishment impacts, and flood zone compliance.

3. Management and Mitigation of Sand Encroachment

As in many coastal areas, residential and commercial structures have been built along the Chesapeake Bay shoreline for decades. Their presence and location have significantly altered the natural dune environment that existed before development. These urban developments are constantly affecting and affected by the natural dynamics of the beach, with sand shifting and moving onshore, alongshore, and offshore. Beach habitats also are heavily impacted by episodic events such as nor'easters, hurricanes, and winter wind events.

For structures sited behind the dune line, a robust beach and dune system is the primary, shoreline protection against hazards resulting from severe wave action and flooding from the Chesapeake Bay. As such, they are a meaningful public facility, as part of the City's flood control and shore protection system.[1] However, weather events can move, add, or remove large amounts of sand within this system. When structures are built in the middle of a beach ecosystem, such as the homes in the Norfolk Ocean View Bayfront community, changes in natural beach forces should be expected. Before the Norfolk Ocean View Bayfront was developed in the early part of the 20th Century, historical photographs show the beach and natural dunes extended hundreds of feet farther inland and some of the dunes were over fifty feet high. This sand was subsequently mined and used as fill for a variety of projects.

Dunes provide a reservoir of sand available to replace losses from the beach and serve as a valuable form of protection from erosive wave action. Because of the crescent-shaped shoreline along Cottage Line and East Ocean View, the sand reservoir in this area naturally contains more sand than in other parts of the system, due to prevailing currents, winds, and wave action. Subsequently, these areas of accretion are experiencing the most problematic sand encroachment issues. The beach areas in Willoughby and East Beach do not have this problem. Instead, these areas, which are towards the ends of the crescent, are generally erosional, and a large dune sand reservoir is not available since it lacks a natural dune-building process.

Sand from the dry beach tends to blow inland, with greater amounts of sand blowing from wider beaches, as occurs in eastern Cottage Line and western East Ocean View. This wind-blown sand builds up against property fencing, walls, porches, and homes. Compounding the issue is the fact that the houses present an artificial barrier and, in effect, are an obstacle to sand movement. Blown sand also increases dune height, and this moving sand then spills over and widens the dune as it migrates landward.

In a dune area influenced by human activity, capturing and controlling sand accumulation around a residential area involves a combination of methods. Sand encroachment can be mitigated by ensuring dunes remain vegetated and fenced, as needed, and by altering anomalous, unstable features of a dune and the subsequent localized wind-driven sand transport patterns. Vegetated sand dunes tend to trap and immobilize sand and are intrinsically more stable than bare sand dunes. Monitoring sand movement, to address migration before it becomes a threat to properties, is also necessary. Any alteration of the dune profile, however, must consider the protection provided by the dune. Therefore, modifications to the dune profile must maintain the robustness of the dune profile.

3.1 Monitoring

The natural environment along the shore is not static. Changes in the environment often occur slowly over the course of many years. This is true for both those changes that result from human efforts to protect or improve the shore environment and those changes caused by climatological changes or the occurrence of specific weather events. Thus, the process of monitoring the beach and dune system will likely be more effective if it can be done in a way that is regular, consistent, continuous, and comprehensive.

By establishing a Coastal Management and Review Board (CMRB), each of these goals can be advanced. The Board's principal responsibility would be to monitor changes in the beach and dune environment and to assess the progress of management projects in order to report on what is being achieved under the Sand Management

[1] For example, but not by way of limitation, the phrase "public facility" as used in this SMP is not intended to be and is not an indication of title, and any action taken under this plan based upon the identification of property being a "public facility" does not transfer, convey, or otherwise convert private property into public property. Any question of title to such property is without prejudice to any person's or entity's right to assert title to such property.

Plan. The CMRB should be required to have a certain number of meetings per year (at least two is recommended) and should remain in place as a permanent body. This lends regularity and continuity to the process. Terms of members should be staggered and of sufficient length to build institutional knowledge about the beach and dune system, bringing consistency to the process. The CMRB should be comprised of representatives and designees of those organizations, institutions, agencies, and citizen stakeholders that have regulatory and financial interests in the responsible stewardship of the beach and dune system. This ensures that the base of knowledge available to the monitoring body will be comprehensive. The CMRB should be composed of the following:

(a) 2 Political representatives: 2 members of Norfolk City Council (must be from Ward 1, Ward 5, Super Ward 6, or Mayor); members shall be designated by the City Council)

(b) 3 Neighborhood representatives:

(1) President (or his/her designee) of East Ocean View Civic League

(2) President (or his/her designee) of Cottage Line Civic League

(3) President (or his/her designee) of Willoughby Civic League

(c) 3 City Staff representatives:

(1) Dept. of Public Works representative (designated by Department Director)

(2) Dept. of City Planning representative (designated by Department Director)

(3) Staff member of Office of the City Manager (designated by City Manager)

(d) 4 External Organizations representatives:

(1) Representative from Department of Ocean, Earth & Atmospheric Sciences of Old Dominion University (designated by Department Chair)

(2) Staff member of Virginia Marine Resources Commission, Habitat Management Division (designated by Chief of Habitat Management)

(3) Staff member of Army Corp of Engineers, Norfolk District (designated by District Engineer)

(4) Staff member of Virginia Institute of Marine Science (designated by VIMS Director)

The CMRB should have the following duties and responsibilities:

(a) Meet no less than semi-annually. Additional meetings may be held when called by the chairperson for the purpose of reviewing any information or project where review at the next regular meeting would result in a delay which would likely cause a significant increase in cost or would continue exposing persons or property to an existing threat of injury or damage for an extended period of time.

(b) Initiate and recommend amendments to this Sand Management Plan. No changes to the Plan should be made without a review and recommendation from the Board prior to consideration by the City Planning Commission or the City Council.

(c) Receive and review annual reports which provide the following information:

(1) Topographical or LIDAR surveys showing any changes to the beach and dune environment, including erosion and accretion.

(2) Dune planting success and mortality and progress of invasive vegetation eradication efforts.

(3) Beach nourishment projects.

(4) Dune blowout repairs and other alteration activity in a dune.

(5) Sand fence locations and effects.

(6) Breakwater modification and performance measures.

(7) Effects of seasonal storms impacts.

(8) Alterations to, construction of, and removal of any beach access.

(9) Alterations to the profile of the crest or front face of a dune as set forth in section 4.1, below.

(10) Other projects or activities that impact the health or use of the dune environment.

(d) Make recommendations regarding policies and procedures for:

(1) Adopt-a-Dune program to promote education and responsible stewardship of the shoreline environment.

(2) Instructional or written materials to assist citizens with appropriate dune/vegetation plantings.

(3) Instructional events or written materials to assist citizens with maintenance of noncommercial beach access walkways.

(4) Conducting training for citizens to assist City's field operations for eradicating invasive vegetation by identifying and locating problem areas.

(5) Guidelines for appropriate methods of performing other activities exempt from state Dune Protection Act regulation. All such guidelines shall be posted on the City's website and available at the Bureau of Environmental Services.

(e) Review and recommend approval or denial of nonemergency construction of beach accesses as set forth in section 3.4, below.

3.2 Vegetation

Dunes made up of newly deposited, wind-blown sand are often bare of vegetation and highly susceptible to wind erosion. Migrating dunes, due to prevailing north, northeast, and northwest winds, are common in the Cottage Line and East Ocean View areas of the Bayfront. In some locations, the dune ridge facing the Bay is breached by pathways, public access points, and blowouts.

Several methods are commonly used to increase the stability of existing dunes, repair damaged dunes and blow-outs, and encourage sand accumulation on the bay side of the dune's crest. The methods include planting dune vegetation, installing walkways or structures for public access, using sand fencing, and sand replenishment projects. To encourage natural dune formation, plantings of native vegetation or fences can be used to start and accelerate sand accumulation. Plantings of native vegetation should be the primary method associated with dune construction, stabilization, improvement, and repair.

Vegetation should be planted on areas of bare sand, on both the bay and landward sides of the dune. Structures such as slatted wood or plastic sand fencing can help trap sand and stabilize dunes, but in most cases they are used as a last resort and removed when vegetation is established. The exception is in areas where prevailing winds blow undesirable amounts of sand in from the beach, covering vegetation and rendering it ineffective at capturing sand. In such instances, to reduce inland movement of sand and enhance vegetation effectiveness, sand fencing may be retained and maintained in place. In areas where the local sand supply is insufficient for these two sand-trapping methods to be effective, dunes can be constructed with imported sand. All dune improvement project sites should then be vegetated or fenced to maintain stability.

Residents are allowed and encouraged to plant authorized types of native vegetation for dune stabilization on the dune crest, dune face, or back dune. Native dune plants are available locally or, when redistributing sand from vegetated areas, vegetation may be salvaged and saved for replanting.

Guidance for planting and transplanting beach vegetation is available from the "Native Plants for Dune Restoration and Habitat Diversity: A Source Guide" maintained by the City's Bureau of Environmental Services and provided at the City of Norfolk website, www.Norfolk.gov. Contact information for purchasing native plants is provided in this guide, along with photos of plants and availability. Native dune plants, such as American Beach Grass

(Ammophila breviligulata) for example, are normally planted 12-18 inches apart and planted no less than nine (9) inches deep, with a tablespoon of slow-release fertilizer placed in each hole. Closer placement is recommended on the tops of dunes and on steep slopes.

The City's Bureau of Environmental Services should be contacted prior to plant purchase to provide free consultation and assistance regarding dune planting. Planting should be undertaken between the months of December and March for optimal survival.

Activities

(1) *Planting*. The planting of beach grasses or other vegetation for the purpose of stabilizing coastal primary sand dunes is permitted as follows:
   - (a) On city-owned property, planting may be done by City forces under supervision, provided it is done for a public purpose.
   - (b) On privately-owned property, planting may be done by any person with the owner's permission, limited to the following noninvasive, acceptable species:
     - American beach grass (Ammophila breviligulata)
     - saltmeadow hay (Spartina patens)
     - sea oats (Uniola paniculata)
     - short dune grass (Panicum amarum)

(2) *Controlling invasive vegetation*. Eradication of invasive vegetation is permitted as follows:
   - (a) On city-owned property, eradication with controlled application of approved herbicides or by manual extraction can be conducted by City forces under supervision, provided it is done for a public purpose.
   - (b) On privately-owned property with the owner's permission:
     - (i) Eradication with controlled application of approved herbicides can be performed if approved by a permit issued under the applicable provisions of Title 28.2, Chapter 14 of the Code of Virginia and in accordance with any conditions place on such approved permit.
     - (ii) Manual removal of vegetation that is invasive and harmful to dune environment, including impairing the health or growth of non-invasive dune grasses and plants, can be performed. However, removal of any of the 13 species that are specifically identified in the definition of "Coastal primary sand dune" (found in Virginia Code § 28.2-1400(A)) <u>is prohibited</u> unless specifically authorized by a valid permit. (The definition is reprinted in Appendix B, at page 20 of this SMP.)

Other Programs

The City will provide classes and field training for citizens interested in dune topics, including how to support city staff's dune planting and eradication efforts. Classes may be offered in conjunction with other environmental education programs such as wetlands courses.

3.3 Sand Fencing

The planting of native vegetation to trap sand is always preferable to the use of man-made structures. For reasons of aesthetics, safety, and possible interruption of public access, dune-building structures are normally installed

temporarily while vegetation takes hold. After a storm event, structures, such as sand fencing, should be reinstalled if lost or damaged, to allow for vegetation to recover. Where wind-blown sand routinely or seasonally covers vegetation, a combination of vegetation and fencing is necessary for dune stability and prevention of sand migration inland. In such cases, sand fencing may be required for a longer interval.

Sand fencing is intended for dune stabilization and sand control, and is not appropriate for restricting public access, or outlining private property boundaries. Sand fencing and posts may be purchased at almost any large hardware store or ordered online. Materials, such as Christmas trees and brush, are not effective at sand capture, are unsightly, and not recommended for placement on the dunes.

Standard, slatted wood sand fencing is the preferred form, since it is cost-effective, readily available, easy to handle, and can be erected quickly. A height of four feet, measured from the ground surface after installation, normally is recommended for dune-building structures such as fences, although other heights might be used in certain areas based on unusual conditions. The fencing can be supported with wooden posts at no more than 10-foot intervals. The minimum practical length for posts is about 6 feet, although longer and more deeply embedded posts are often advantageous. The fencing material may be secured by fastening it to each post with sturdy zip ties, and the fencing should be woven between the posts so that every other post has fencing facing the bay-ward side.

If the base of a sand fence is placed at ground level, dunes will build against and over the structure. In areas with wind-blown sand migrating inland, fencing can be placed six to ten feet bay-ward below the dune crest, with a second row halfway up the dune, so as to inhibit sand from blowing up and over the dune. The dune will then grow in volume bay-ward instead of landward. Newly collected sand should be vegetated on the bay-ward side of the sand accumulation.

At least 4- to 5-foot openings or gaps should be provided between 50-foot runs of fencing to allow for resident and public access points. Openings can be overlapped to reduce sand blowing through the opening. Public vehicle access points should be provided with fencing perpendicular to the access opening and far enough away from the entrance to allow passage of vehicles. The intent is to inhibit sand from blowing into and building up at the access. In some instances, to control sand and public traffic movement, fencing may be used effectively along either or both sides of an access.

Activities

(1) *General standards*. The following general rules apply to all installations of sand fencing on public property:

- (a) Sand fencing is a temporary structure and should be removed before it becomes so deteriorated or inundated by sand accumulation that removal becomes exceptionally difficult.
- (b) No sand fencing should be placed without consulting with the City's Bureau of Environmental Services or Department of Public Works prior to installation, for the purpose of reviewing the quality and characteristics of the proposed fence construction, assessing the likelihood that the fencing will result in stabilizing the dune or dune features, and evaluating any hazards to public health or safety that might be created.
- (c) If the fence placement project proceeds, the location of installation, including the location of each post, must be documented so that, upon removal of the fence at a later time, all elements of the fence can more easily be found and extracted.

(2) *Installation*. Sand fences or other material on or adjacent to coastal primary sand dunes may be installed for the purpose of stabilizing such features as follows:

(a) No sand fence that presents a hazard to public health or safety due to materials, the means of construction, the means of installation, or any other characteristic of the fence may be installed.

(b) On city-owned property, fences may be installed by City forces.

(c) On privately-owned property, fences may be installed by any person with the owner's permission, provided that the location of installation, including the location of each post, must be documented so that, upon removal of the fence at a later time, all elements of the fence can more easily be found and extracted.

3.4 Breaches, Blowouts and Beach Access

Ideally, to maintain access and protect the dunes and vegetation from trampling, access to the beach should be provided using articulated walkways or stairways. However, many property owners with lots directly abutting the beach and dunes have historically enjoyed direct access from their land, through the dune, onto the beach. It is not uncommon for this access to be a simple, at-grade path worn through the dune and denuded of vegetation. This SMP does not eliminate those accesses. Rather, it acknowledges the ability of owners to continue those accesses which are already in place at the time of its adoption. However, the SMP encourages the improvement of at-grade access paths by incentivizing their replacement with walkovers and closing the gap where the old path had been by filing the dune to a continuous, uniform, stable profile. Shared elevated or at-grade improved walkways that serve multiple residences are encouraged. Chapters 8 and 9 of the CBCMA Guide provide details on the regulations and requirements for installing various walkways and stairs. If a wooden walkway or stairway is not feasible, sand fencing lining access ways through the dune can be installed. Existing accesses should be maintained at an angle or with changes in their orientation, with fencing perpendicular to the prevailing winds, to prevent a straight north-south blowout.

Where the City has created public emergency vehicle accesses that are lower than adjacent dunes, plans should be established to ensure the breach is closed when significant storm surge is imminent. Sand berms can be temporarily bulldozed into place until the threat has passed.

Breach and blow-out areas usually consist of wind-eroded ditches or cuts through higher dunes, or open areas of non-vegetated sand vulnerable to transport by high winds. At breach and blowout areas, pathways should be relocated if feasible and the original blow-outs repaired or allowed to recover.

Multiple tiers of dune-building structures can be used to increase sand entrapment and restore the blow-out. The first structure should be placed at the landward end of the blowout. When sand has built up along this structure, a second structure can be erected bay-ward. After sand accumulates there, a third structure is placed between the first two. The breaks or openings in the tiers should be offset to facilitate sand entrapment and allow resident and public access if that pathway remains in use. The dune-building structure should not extend bay-ward of the dune line on either side of a breach or blowout. Open sand should be vegetated for natural stabilization.

Activities

(1) *Closing of breaches*. Breaches in the structure of the dune and blow-out areas that create or worsen a cut through the dune structure can be filled and repaired as follows:

(a) On city-owned property, a breach or blow-out area can be repaired by City forces, provided it is done for a public purpose.

(b) On privately-owned property with the owner's permission, a breach or blow-out area can be repaired as follows:

(i) The work can be performed by City forces in either of the following instances:

(A) The repair activities are related to a declaration of emergency by the Norfolk City Council, the Governor of the Commonwealth of Virginia, or any other public health officer for the purpose of protecting public health or safety; or

(B) The City has acquired an easement upon the private property where the repair work is contemplated allowing for the operation, repair, and maintenance of a public flood control and shoreline protection facility.

(ii) If the work is done by the City, the criteria set forth in (a), above, also apply.

(iii) If no emergency has been declared and if the City has not acquired sufficient rights or interests in the private property where the repair work is contemplated, then the work can be performed by the owner if approved by a permit issued under the applicable provisions of Title 28.2, Chapter 14 of the Code of Virginia and in accordance with any conditions place on such approved permit.

(c) All breach and blow-out repair work shall be limited to adding sand to the dune to match the existing height, slope, and profile of the stable part of the dune existing on either side of the repair area. No sand should be added to the existing, vegetated crest area or vegetated front face of the dune except in order to achieve the height, slope and profile described above.

(d) If repair work is needed on privately-owned property and the consent of the owner cannot be obtained, the City may undertake work on portions of city-owned property proximate to the private property boundary in order to minimize the effects of the breach or blow-out. In such cases, any activity described in this Sand Management Plan may be utilized, in accordance with the applicable standards and procedures.

(2) *Replacements of at-grade pedestrian paths accessing private property*. Any pedestrian access path from privately-owned property to the sandy beach that crosses through the dune such that the opening for the path constitutes a break in the structure and profile of the dune system similar to a breach can, at the election of the property owner, be replaced with an elevated walkway as follows:

(a) On city-owned property, the at-grade crossing can be filled and the walkway can be constructed when all of the following criteria are met:

(i) The project complies with the regulations of the United States Army Corps of Engineers (USACE) and compliance with Title 33 § 408 of the Unites States Code (33 U.S.C. § 408) in order to determine whether the replenishment work would be injurious to the public interest or would impair the usefulness of the Berm Project undertaken by the USACE.

(ii) All costs associated with the project are paid by the owner of the private property that is accessed by the walkway.

(iii) The governing body has granted an easement to the private property owner securing the right to use the walkway as access across the entire width (north to south) of the dune and has granted an encroachment authorizing the installation of the walkway structure on public property.

(iv) The walkway is elevated and constructed in such a manner that the contour of the dune is not altered.

(v) No observation platform is accessed by or included as part of the walkway.

(vi) The project has been reviewed by the Coastal Management and Review Board and the Board has made a recommendation to the City Manager that the project should be approved, approved subject to any conditions, or denied.

(b) On privately-owned property with the owner's permission:

(i) The at-grade crossing can be filled and the walkway can be constructed if approved by a permit issued under the applicable provisions of Title 28.2, Chapter 14 of the Code of Virginia and in accordance with any conditions place on such approved permit.

(ii) The walkway can be constructed, without any part of the dune being filled, if it is done in such a manner that the contour of the dune is not altered.

(3) *Pedestrian walkways accessing the beach from public property or public right-of-way.*

(a) Existing pedestrian walkways accessing the beach from public property or a public right-of-way may be repaired or replaced provided that all portions of the walkway are located on public property.

(b) New pedestrian walkways accessing the beach from public property or a public right-of-way may be constructed in accordance with the following standards:

(i) The project complies with the regulations of the USACE and compliance with Title 33 § 408 of the Unites States Code (33 U.S.C. § 408) in order to determine whether the replenishment work would be injurious to the public interest or would impair the usefulness of the Berm Project undertaken by the USACE.

(ii) All portions of the walkway are located on public property.

(iii) The access is accessible and open to use by the general public to provide beach access.

(iv) The project has been reviewed by the Coastal Management and Review Board and the Board has made a recommendation to the City Manager that the project should be approved, approved subject to any conditions, or denied.

(4) *Maintenance of elevated walkways, at grade walkways, and observation platforms.*

(a) Non-commercial walkways and observation platforms may be maintained by sweeping or otherwise clearing sand off of the walkway and stairs provided that the work does not result in any alteration to the contour of the dune.

(b) Commercial walkways and observation platforms may only be maintained if approved by a permit issued under the applicable provisions of Title 28.2, Chapter 14 of the Code of Virginia and in accordance with any conditions place on such approved permit.

Other Programs

In order to protect the dunes, the City shall post "Keep Off the Dunes" signage for all areas of dunes on public property, except at points of beach access for pedestrians or vehicles. Any activity in violation of this prohibition will be investigated and prosecuted in order to promote compliance with the prohibition.

4. Sand and Dune Alteration Criteria

In areas where excess sand encroaches on private or public man-made structures, such as houses, sheds, gazeboes, fences, stairways, walkways, and decks, the intent of this SMP is to:

a. Remove only as much sand as needed to reduce existing or impending threats of property damage or property values;

b. Restore safe conditions to resident and public lane access ways; and

c. Create or restore native dune habitats in an effort to significantly reduce future sand encroachment.

The goal of this work is to remove or relocate sand that has built-up in front of businesses or private residences to the point that the excess sand compromises the safe and appropriate use of the property. While aesthetics and water views contribute to property values and resident enjoyment, altering dunes to restore bay views, mainly in areas of sand build-up and encroachment must be done conservatively, and needs to be conducted in a manner that enhances dune stability and preservation. Preserving dune height maintains the value of dunes as a means

of intercepting sand and as a flood control facility to protect property from wave action, over-wash and flooding that can result.

To accomplish the SMP's objectives and to meet federal, state and local regulations, criteria are established in this SMP to govern sand removal and dune alterations by both the City and any private concerns. This is accomplished by setting minimum goals for dune crest elevation and side-slope contours for the dune system along the Norfolk Ocean View Bayfront, where lowering dune crests can concurrently enhance vegetation and improve dune stability, while increasing or maintaining property values. Dune heights vary widely along the Norfolk Ocean View Bayfront. Various engineering studies have tried to determine optimal dune heights for this area that would provide protection from storms and hurricanes based on potential wave height, wave run-up, and wave overtopping.

The setting of one optimal dune elevation for the entire 7.3-mile stretch of the Norfolk Ocean View Bayfront does not take into account how the flood potential differs in the areas with and without primary frontal dunes. To accommodate the varying topography of the shoreline, setting of dune crest elevations for the entire Norfolk Ocean View Bayfront should – at a minimum – be based on that applicable Base Flood Elevation (BFE), which is defined as the expected highest elevation to which floodwater is anticipated to rise during a one percent (1%) annual chance flood event) as published on current FEMA Flood Insurance Rate Maps (FIRMs). The Norfolk Ocean View Bayfront is also designated as a Coastal High Hazard Area (CHHA). The CHHA is defined as a Special Flood Hazard Area (SFHA) extending from offshore to the inland limit, or landward toe, of a primary frontal dune along an open coast, and any other are subject to high-velocity wave action (i.e. subject to wave heights of 3 feet or more, regardless of beach contour or existence of any dunes). The hazard zone is mapped with base flood elevations (BFEs) that reflect the combined influence of stillwater flood elevations, primary frontal dunes, and wave effects 3 feet or greater.

To preserve the protective barrier that dunes provide, the SMP is based on the current effective FIRM BFE for developing minimum dune heights at the subject location. Since, the BFE only addresses a 100-year flood (1% annual chance) coastal storm event, the potential for less frequent and more extreme storm events always exists, Hence, a minimum 3 feet of freeboard has been added to the BFEs to establish and define the minimum dune crest elevation for the different areas of the Ocean View shoreline. Freeboard is a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action and sea level rise. Freeboard is not required by NFIP standards, but communities are encouraged to adopt a freeboard to account for the one-foot rise built into the concept of designating a floodway and the encroachment requirements where floodways have not been designated. In areas where the NFIP Community Rating System is in place, freeboard requirements result in significantly lower flood insurance rates due to lower flood risk.

4.1 Sand Relocation

Sand encroachment can be mitigated by removing sand from the base of private property fences, porches, or foundations, by excavating the wedge of sand resting on properties or against walls. The newly exposed sand surface should be contoured to restore a stable elevation. Approved drawings, submitted with the permit application, will define the height, width, and slope of the affected primary frontal dune.

Sand excavation and dune reshaping work preferably should be performed within the planting season so that the affected area can be vegetated and stabilized. If re-vegetation of disturbed sand is required, work should then take place between the optimal planting season of October and March. Removal of the sand will be done in such a way as to avoid impacting existing dunes, native dune plants or sensitive species, as detailed in each project's specific plans. The limits of excavation and sand deposition will be clearly staked prior to commencement of work.

Work will be monitored by the City's Bureau of Environmental Services to ensure adherence to pre-determined conditions indicated on plans, such as (i) access and exit points for mechanized equipment, (ii) sand removal, deposition and contouring methods, and (iii) sensitive species and planned re-vegetation locations.

Re-vegetation, and replacement of non-viable plants, using approved native dune plants is required to be accomplished as soon as possible after sand disturbance and re-planted as needed. To minimize impacts on dune stability and support newly planted vegetation, planting is to be accomplished between the months of October and March.

Activities

(1) *General standards*. The following standards apply to any project that results in removing any sand from any portion of a coastal primary sand dune:
   (a) The anticipated public and private benefits of the project must exceed its anticipated public and private detriments.
   (b) The project shall not increase the potential that private property will suffer flood damage.
   (c) Impacts to the crest area of the dune are discouraged except in cases where overall dune integrity and contour is marked by an unnatural anomaly.
   (d) At the completion of all projects involving the removal and replacement of sand, with the exception of such projects conducted under an emergency declaration by the Norfolk City Council, the Governor of the Commonwealth of Virginia, or any other public health officer for the purpose of protecting public health or safety, the capacity of both the dune from which the sand was removed and the dune system overall must maintain the same or greater capacity to provide protection from flooding and storm surge. Assessment of the capacity of any dune from which sand is removed to provide protection from flooding and storm surge shall be performed using technical analysis based on actual geological, topographical, and biomorphic conditions at the site where the work is being performed.
   (e) With the exception of projects conducted under an emergency declaration as set forth in (1)(d), above, a volume of sand equal to the volume removed shall be replaced back into the dune system in a location where additional sand will reduce the likelihood that public or private property might be damaged by flooding.
   (f) The project complies with the regulations of the USACE and compliance with Title 33 § 408 of the Unites States Code (33 U.S.C. § 408) in order to determine whether the replenishment work would be injurious to the public interest or would impair the usefulness of the Berm Project undertaken by the USACE.

(2) *Removal of encroaching sand*. Sand located <u>on the back side of the dune</u> can be removed as follows:
   (a) On city-owned property, the removal can be performed by City forces, provided that:
      (i) The work is done for a public purpose.
      (ii) The back toe of the dune is located either:
         (A) Within five (5) feet of an accessory building, pool, or deck attached to a residential building; or
         (B) Within 15 feet of a principal residential building.
   (b) On privately-owned property with the owner's permission, the removal can be performed as follows:
      (i) The work can be performed by City forces in either of the following instances:
         (A) The repair activities are related to a declaration of emergency as set forth above; or

(B) The City has acquired an easement upon the private property where the repair work is contemplated allowing for the operation, repair, and maintenance of a public flood control and shoreline protection facility.

(ii) If the work is done by the City, the criteria set for in (a), above, also apply.

(iii) If no emergency has been declared and if the City has not acquired sufficient rights or interests in the private property where the removal work is contemplated, then the work can be performed by the owner if approved by a permit issued under the applicable provisions of Title 28.2, Chapter 14 of the Code of Virginia and in accordance with any conditions place on such approved permit.

(c) Any removal of sand from the back side of the dune shall result in a stable condition after completion such that the slope of the back side of the dune measure from toe to crest is no greater than 1-to-4. No part of the crest area should be removed or otherwise impacted by the work except when done in accordance with a dune alteration project under subsection (3), below.

(3) *Alteration of dune*. Sand located <u>in the crest area or front face of the dune</u> can be removed as follows:

(a) On city-owned property or on privately-owned property with the owner's permission:

(i) The removal can be performed by City forces, provided that the activity is related to a declaration of emergency as set forth in section (1)(d), above.

(ii) The removal can be performed if all of the following criteria are met:

(A) The dune is located on or immediately abutting a parcel of private property that is included within a Dune Management Tax Service District defined and established pursuant to Norfolk City Code §§ 24-211.1 through -211.4 or, if no such Tax Service District has been established, within an area designed by the City's Department of Public Works for the purpose of abating ongoing sand accretion or dune growth.

(B) On private property, the City has acquired an easement where the alteration work is contemplated allowing for the operation, repair, and maintenance of a public flood control and shoreline protection facility.

(C) Any removal of sand from the dune shall result in a stable condition after completion such that the slope of the back side of the dune measure from toe to crest is no greater than 1-to-4.

(D) The final elevation of the dune measured at the crest immediately after completion of the work remains no lower than three (3) feet above the lowest elevation determined to maintain "No Increase in Flood Damage" as indicated by the SBEACH model dune erosion methodology used to assess the flood damage impact from a prototypical 1% annual chance coastal storm.

(1) The applicable elevation can be determined by using data sufficient to run the SBEACH model that has been collected from either:

(a) The site where the project is proposed, or

(b) A table of extrapolated data compiled from representative samples and that has been adopted by the CMARB as a valid reference source.

(2) The methodology used to determine the applicable elevation shall be such that it can be independently reproduced and verified.

(E) The project has been reviewed by the Coastal Management and Review Board and the Board has made a recommendation to the City Manager that the project should be approved, approved subject to any conditions, or denied.

(b) On privately-owned property where no emergency has been declared as set forth in (1)(d), above, the removal can be performed if approved by a permit issued under the applicable provisions of Title 28.2, Chapter 14 of the Code of Virginia and in accordance with any conditions place on such approved permit.

(4) *Removal of sand below mean low water.* Any removal of sand from below mean low water, such as a project intended to improve or restore functionality of piers or boat lifts that has been impaired due to the accumulation of deposited sand, can be performed if approved by a permit issued under the applicable provisions of Title 28.2, Chapter 12 of the Code of Virginia and in accordance with any conditions place on such approved permit.

4.2 Replenishment and USACE Berm Project Maintenance

Some sections of the Norfolk Ocean View Bayfront shoreline, particularly along the extreme east and west ends, are sand-starved. Natural sand accumulation occurs very slowly, and storm surge routinely erodes natural and replenished sand. Even with dune-building structures, the process is slow. Where a natural sand reservoir does not exist, dunes may be constructed of imported sand. Such dune building projects, in addition to construction of offshore breakwaters, have been successful in East Beach, for example.

Sand for dune replenishment is normally taken from dredge sources in the Chesapeake Bay channels. Sand for dune construction also can be obtained, if permitted, from areas where accretion has resulted in amounts of sand that do not meaningfully contribute to the stability, resiliency or flood control characteristic of the dune, as may be found in parts of the Cottage Line and East Ocean View areas, so long as the removal complies with the state Dune Protection Act as well as the standards of this SMP.

The U.S. Army Corps of Engineers (USACE) has undertaken a coastal storm damage reduction project to provide a protective berm along much of the 7.3 miles of the Norfolk Ocean View Bayfront shoreline. The project includes the initial nourishment and the periodic, future re-nourishment of a protective beach berm along the entire shoreline where an adequate berm did not exist. To maintain the integrity of the protective berm and dune system, the USACE project authorization includes periodic re-nourishment. Annual monitoring will determine the actual re-nourishment requirements. The Thimble Shoal Auxiliary Channel is the designated borrow area.

An issue that requires SMP monitoring and mitigation is the potential migration of sand due to waves, currents, and wind. In the past, this migrating sand has added to the sand reservoir offshore of the Cottage Line and East Ocean View area. When waves and winds then bring that sand onshore, the prevailing north, northeast, and northwest winds blow that sand inland until it is stopped or impeded by a structure. Encroaching sand threatens properties and builds high, steep dunes. The SMP is intended to address encroachment issues, monitor sand migration, redistribute excavated encroaching sand, and use vegetation and fencing to stabilize and manage the sand.

Activities

(1) *Replenishment of sand on the beach along the Chesapeake Bay and Willoughby Bay.* Sand may be added outside the dune system but within the beach environment.
   (a) All projects involving the placement of sand between the seaward boundary of the dune system and the mean low water boundary of the Chesapeake Bay must comply with all applicable laws, including the regulations of the USACE and compliance with Title 33 § 408 of the Unites States Code (33 U.S.C. § 408) in order to determine whether the replenishment work would be injurious to the public interest or would impair the usefulness of the Berm Project undertaken by the USACE.
   (b) All projects involving the placement of sand below the mean low water boundary of the Chesapeake Bay or Willoughby Bay must comply with the applicable provisions of Title 28.2, Chapter 12 of the Code of Virginia.

(2) *Replenishment of sand within the dune system.* Sand may be added into the dune or dune system as follows:

(a) On city-owned property, by City forces. Whenever possible and economical, sand used for a replenishment project undertaken by the City should utilize sand removed from other locations within the dune system as a result of one or more of the activities allowable in paragraph 4.1, "Sand Relocation," above.

(b) On privately-owned property, with the owner's permission the replenishment can be performed as follows:

(i) The work can be performed by City forces provided that the City has acquired an easement upon the private property where the replenishment is contemplated allowing for the operation, repair, and maintenance of a public flood control and shoreline protection facility.

(ii) If the work is done by the City, the criteria set for in (a), above, also apply.

(iii) The work can be performed by the property owner.(c) No sand shall be removed from any coastal primary sand dune as part of a project that only involves replenishment.

(d) Replenishment that results in adding sand in such locations and volumes or at such times during the growing season that healthy, non-invasive dune vegetation is killed is discouraged.

(e) All sand added during a replenishment project should be placed and graded in a manner consistent with the topography of the surrounding natural environment and designed to minimize the likelihood that it will be lost from the dune system due to natural forces such as wind, waves, and tides.

5. Primary Frontal Dunes (PFDs) and Flood Control

A primary frontal dune (PFD), as defined by the National Flood Insurance Program (NFIP), is a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward of and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The NFIP, administered by FEMA, recognizes the importance of dunes in reducing coastal flood hazards and has established special mapping, insurance, and floodplain management criteria designed to help communities protect the dunes.

The FIRM depiction of the SFHA for coastal hazards mapping is determined by detailed studies of storm surge flooding, storm-induced erosion, and wave effects. The VE Zone, also known as the coastal high hazard area, is an area subject to high velocity water including waves. VE Zone Base Flood Elevations (BFEs), are defined by the 1% annual chance (base) flood limits (also known as the 100-year flood) combined with certain wave effects. The VE zone is mapped using criteria that reflect the combined influence of storm surge stillwater elevations, primary frontal dunes, and the controlling wave heights (either breaking wave heights or wave run-up of 3 feet or greater). The mapped inland boundary of the VE Zone is defined by the landward toe of the PFD, and thus the PFD boundary (and mapped VE Zone) can shift as the landward toe of the dune migrates.

The Norfolk Ocean View Bayfront has areas where PFDs exist, and other areas where there are no dunes at all. Some areas with defined PFDs are areas of sand accretion, where sand has migrated inland and built up against homes and other structures. This migration can extend the landward toe of the PFD farther inland. As a consequence, this has resulted in a change in the mapped location of the VE Zone over time. In some locations where the landward PDF has migrated, the mapped VE Zone now extends inland of the property line of bayfront properties.

In some instances, shifting of the landward toe of the PFD has placed portions of properties into the VE that were previously in a Flood Zone X. One of the SMP criteria for relocating encroaching sand is to prevent migrating sand from negatively impacting the flood zone designation for that insured structure. To ensure dune stability and an equitable establishment of flood zone boundaries to maintain historic flood zone designations, the SMP establishes guidance on an optimal distance for the landward toe of the PFD from principal structures and significant accessory structures.

Activities

(1) *Identification of VE flood zone boundaries*. Using the information available in the Flood Insurance Rate Map (FIRM) then in effect, staff for the City's Department of City Planning can identify those private properties on which an impacted structure may be situated. For purposes of this provision, an impacted structure is any structure other than a fence, wall, or landscaping feature that is situated within the boundary of a VE flood zone.

(2) *Preparation of Letter of Map Amendment*. Upon request, city staff will review relevant, available information and, when warranted based on such information, will prepare a letter for the purpose of seeking an amendment to the FIRM in order to accurately locate the VE zone boundary, with a goal of locating the boundary away from the impacted structure and off of private property.

Appendix A - Regulations

Commonwealth of Virginia

Coastal Primary Sand Dunes and Beaches (Dune Protection Act). All coastal sand dunes and beaches in the Commonwealth of Virginia are currently regulated by the Code of Virginia, § 28.2-1400 et seq., Coastal Primary Sand Dunes and Beaches. This regulation provides a model ordinance that certain localities may adopt. Changes to the regulation and model ordinance require action by the Virginia General Assembly. § 28.2-1408 of the Code of Virginia specifically states that:

> *"No permanent alteration of or construction upon any coastal primary sand dune shall take place which would (i) impair the natural functions of the dune, (ii) physically alter the contour of the dune, or (iii) destroy vegetation growing thereon unless the wetlands board or the Commission, whichever is applicable, determines that there will be no significant adverse ecological impact, or that the granting of a permit is clearly necessary and consistent with the public interest, considering all material factors."*

Some uses and activities are permitted under the Dune Law, such as the construction of private walkways and observation platforms, provided that they do not alter the contour of the coastal primary sand dune. It is important to make clear that the entire dune is covered by this law, even if all or part of the dune is on private property.

Coastal Primary Sand Dune/Beach Act Guidelines, VMRC Eff. Sep 26, 1980, reprinted Sep 1993, Recommendations for Update Sep 2007
http://mrc.virginia.gov/regulations/dune_guidelines.pdf

http://www.vims.edu/research/departments/physical/programs/ssp/_docs/costal_primary_dune_beach_act.pdf

Chesapeake Bay Dune Systems: Evolution and Status, C.S. Hardaway *et al.*, VIMS, Nov 2001
http://web.vims.edu/GreyLit/VIMS/Shoreline%20Evol%20Reports/CBDuneSystems2001.pdf

City of Norfolk

Coastal Primary Sand Dune Ordinance. As authorized by the Code of Virginia, § 28.2-1403, the City of Norfolk adopted the Coastal Primary Sand Dune Ordinance in 1981. The City's Dune Ordinance also covers beaches. Development in these areas requires a permit from the Norfolk Wetlands Board. If a project involves the use, development or any other activity that will impact a coastal primary sand dune or beach, a dune/beach permit is required. The City's Bureau of Environmental Services provides staff services to the Wetlands Board and processed permit applications.

Coastal Primary Sand Dune Protection Act 1980, from VA Code § 28.2-1400 to -1420 – re-codified as Coastal Primary Sand Dunes and Beaches Act in Code § 28.2-1400 to -1420, as amended 1994, 1998, 2008

http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+28.2-1403

Flood Insurance Study, City of Norfolk, VA, FEMA Flood Insurance Study Number 510104V000A, preliminary 15 August 2012 https://www.rampp-team.com/county_maps/virginia/norfolk/norfolk_va_fis_tables_1.pdf

Chesapeake Bay Coastal Management Area (CBCMA) Guidance Document
http://www.norfolk.gov/documentcenter/view/1722

Chapter 49 - WETLANDS AND COASTAL PRIMARY SAND DUNES Municipal Code, Chapter 49, Article III, Sec. 49
https://www.municode.com/library/va/norfolk/codes/code_of_ordinances?nodeId=COCI_CH49WECOPRSADU_ARTIIICOPRSADU.

Native Plants for Dune Restoration and Habitat Diversity: A Source Guide
http://www.norfolk.gov/DocumentCenter/View/3830,

Federal Emergency Management Agency (FEMA) Related References

44 CFR Section 59.1 of the National Flood Insurance Program (NFIP) Regulations: Definitions of NFIP Terms, 2006 revision
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title44/44cfr59_main_02.tpl

FEMA Map Service Center, FIRM Panel 5101040030F
https://msc.fema.gov/webapp/wcs/stores/servlet/FemaWelcomeView?storeId=10001&catalogId=10001&langId=-1

Flood Hazard Zones – FEMA Coastal Flood Hazard Analysis and Guidelines: Focused Study Report, Feb 2005
http://www.fema.gov/media-library-data/20130726-1541-20490-5411/frm_p1zones.pdf

Appendix B – Definitions and Acronyms

ACCRETION: The accumulation of (beach) sediment, deposited by natural fluid flow processes.

BACKSHORE: (1) The upper part of the active beach above the normal reach of the tides (high water), but affected by large waves occurring during a high. (2) The accretion or erosion zone, located landward of ordinary high tide, which is normally wetted only by storm tides.

BAY: A recess or inlet in the shore of a sea or lake between two capes or headlands, not as large as a gulf but larger than a cove.

BASE FLOOD ELEVATION (BFE): The elevation in feet of the one percent (1%) annual chance flood level, as shown in the FIS and FIRM

BEACH: (1) A deposit of non-cohesive material (e.g. sand, gravel) situated on the interface between dry land and the sea (or other large expanse of water) and actively "worked" by present-day hydrodynamics processes (i.e. wave, tides and currents) and sometimes by winds. (2) The zone of unconsolidated material that extends landward from the low water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation. The seaward limit of a beach - unless otherwise specified - is the mean low water line. A beach includes foreshore and backshore. (3) The zone of unconsolidated material that is moved by waves, wind and tidal currents, extending landward to the coastline.

BEACH CREST: The point representing the limit of high tide storm wave run-up.

BEACH EROSION: The carrying away of beach materials by wave action, tidal currents, littoral currents or wind.

BEACH FACE: The section of the beach normally exposed to the action of wave uprush. The foreshore of the beach.

BEACH HEAD: The cliff, dune or sea wall looming the landward limit of the active beach.

BEACH NOURISHMENT: The process of replenishing a beach by artificial means; e.g., by the deposition of dredged materials, also called beach replenishment or beach feeding.

BEACH PROFILE: A cross-section taken perpendicular to a given beach contour; the profile may include the face of a dune or sea wall, extend over the backshore, across the foreshore, and seaward underwater into the nearshore zone.

BEACH RIDGE: A low extensive ridge of beach material piled up by storm waves landward of the berm. Usually consists of very coarse sand, gravel or shells. Occurs singly or as a series of more or less parallel ridges.

BEACH SCARP: (1) An almost perpendicular slope along the beach foreshore; an erosional feature due to WAVE action, it may vary in height from a few centimeters to several meters, depending on wave action and the nature and composition of the beach. See "escarpment." (2) A steep slope produced by wave erosion.

BEACH WIDTH: The horizontal dimension of the beach measured normal to the shoreline.

BERM: (1) On a beach: a nearly horizontal plateau on the beach face or backshore, formed by the deposition of beach material by WAVE action or by means of a mechanical plant as part of a beach recharge scheme. (2) On

a structure: a nearly horizontal area, often built to support or key-in an armor layer. (3) A linear mound or series of mounds of sand or gravel generally paralleling the water at or landward of the line of ordinary high tide

BLOWOUT: A depression on the land surface caused by wind erosion.

COASTAL CURRENTS: (1) Those currents which flow roughly parallel to the shore and constitute a relatively uniform drift in the deeper water adjacent to the surf zone. These currents may be tidal currents, transient, wind-driven currents, or currents associated with the distribution of mass in local waters. (2) For navigational purposes, the term is used to designate a current in coastwise shipping lanes where the tidal current is frequently rotary.

COASTAL HIGH HAZARD AREAS-- Those areas identified as VE Zones on the FIRM extending from offshore to the inland limit of the Coastal Primary Sand Dune, as defined by state law (Code of Virginia Title 28.2), and subject to wave heights of three (3) feet or more.

COASTAL MANAGEMENT: The development of a strategic, long-term and sustainable land use policy, sometimes also called shoreline management.

COASTAL PRIMARY SAND DUNE, DUNE or **PRIMARY FRONTAL DUNE** means a mound of unconsolidated sandy soil which is contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from ten percent or greater to less than ten percent, and upon which is growing any of the following species: American beach grass (Ammophila breviligulata); beach heather (Hudsonia tomentosa); dune bean (Strophostyles spp.); dusty miller (Artemisia stelleriana); saltmeadow hay (Spartina patens); seabeach sandwort (Honckenya peploides); sea oats (Uniola paniculata); sea rocket (Cakile edentula); seaside goldenrod (Solidago sempervirens); Japanese sedge or Asiatic sand sedge (Carex kobomugi); Virginia pine (Pinus virginiana); broom sedge (Andropogon virginicus); and short dune grass (Panicum amarum). For purposes of this ordinance, "coastal primary sand dune" shall not include any mound of sand, sandy soil, or dredge spoil deposited by any person for the purpose of temporary storage, beach replenishment or beach nourishment, nor shall the slopes of any such mound be used to determine the landward or lateral limits of a coastal primary frontal sand dune.

CURRENT: (1) The flowing of water, or other liquid or gas. (2) That portion of a stream of water which is moving with a velocity much greater than the average or in which the progress of the water is principally concentrated. (3) Ocean currents can be classified in a number of different ways. Some important types include the following:

- Periodic - due to the effect of the tides; such currents may be rotating rather than having a simple back and forth motion. The currents accompanying tides are known as tidal currents.
- Temporary - due to seasonal winds.
- Permanent or ocean - constitute a part of the general ocean circulation. The term drift current is often applied to a slow broad movement of the oceanic water.
- Nearshore - caused principally by waves breaking along a shore.
- Also, coastal currents that run parallel to the coast.

EROSION: Wearing away of the land by natural forces. On a beach, the carrying away of beach material by wave action, tidal currents or by deflation. (2) The wearing away of land by the action of natural forces. The collapse, undermining or subsidence of land along the shore of a lake or other body of water. Erosion is a covered peril if it is caused by waves or currents of water exceeding their cyclical levels which result in flooding.

ESCARPMENT: A more or less continuous line of cliffs or steep slopes facing in one general direction which are caused by erosion or faulting, also called scarp.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)--The federal agency under which the NFIP is administered. In March 2003, FEMA became part of the newly created U.S. Department of Homeland Security.

FLOOD or FLOODING:

(a) A general or temporary condition of partial or complete inundation of normally dry land areas from either of the following:
   (1) The overflow of inland or tidal waters; or
   (2) The unusual and rapid accumulation or runoff of surface waters from any source.

(b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in subparagraph (a)(1) of this definition.

(c) Mudflows which are proximately caused by flooding as defined in subparagraph (a)(2) of this definition and are akin to a river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water and disposed along the path of the current.

FLOOD INSURANCE RATE MAP (FIRM): The official map on which FEMA has delineated both the special flood hazard areas and other flood areas within the city. The FIRM may be available digitally.

FLOODPLAIN: Floodplain or flood-prone area: Any land area susceptible to being inundated by water from any source.

FLOOD ZONES:

Zone A – Under the National Flood Insurance Program, area subject to inundation by the 100-year flood where wave action does not occur or where waves are less than 3 feet high, designated Zone A, AE, A1-A30, A0, AH, or AR on a Flood Insurance Rate Map.

Zone AE – The portion of the Special Flood Hazard Area (SFHA) not mapped as Zone VE. It includes the Moderate Wave Action area, the Minimal Wave Action area, and the riverine SFHA.

Zone B – Areas subject to inundation by the flood that has a 0.2-percent chance of being equaled or exceeded during any given year, often referred to the as 500-year flood. Zone B is provided on older flood maps, on newer maps this is referred to as "shaded Zone X."

Zone C – Designates areas where the annual probability of flooding is less than 0.2 percent. Zone C is provided on older flood maps, on newer maps this is referred to as "unshaded Zone X."

Zone V – See "Coastal High Hazard Areas."

Zone VE – The portion of the coastal Special Flood Hazard Area where base flood wave heights are 3 feet or greater, or where other damaging base flood wave effects have been identified, or where the primary frontal dune has been identified.

Zone X – Under the National Flood Insurance Program, areas where the flood hazard is lower than that in the Special Flood Hazard Area. Shaded Zone X shown on recent Flood Insurance Rate Maps (Zone B on older maps) designate areas subject to inundation by the 500-year flood. Unshaded Zone X (Zone C on older Flood Insurance Rate Maps) designate areas where the annual probability of flooding is less than 0.2 percent.

Zone X (Shaded) – Areas subject to inundation by the flood that has a 0.2-percent chance of being equaled or exceeded during any given year, often referred to the as 500-year flood. This area also includes areas protected by accredited levee systems.

Zone X (Unshaded) – Designates areas where the annual probability of flooding is less than 0.2 percent

FORESHORE: (1) The part of the shore, lying between the berm crest and the ordinary low water mark, which is ordinarily traversed by the uprush and backwash of the waves as the tides rise and fall. (2) The same as the beach face where unconsolidated material is present. (3) In general terms, the beach between mean higher high water and mean lower low water.

FREEBOARD: The vertical distance between the BFE and the local minimum required lowest elevation in the AE, AH, VE, and Coastal A Zones that provides additional protection for the unknown or unquantified factors that could contribute to greater flood heights.

GRADIENT: (1) A measure of slope of soil in meters of rise or fall per meter of horizontal distance. (2) More general, a change of a value per unit of distance, e.g. the gradient in longshore transport causes erosion or accretion. (3) With reference to winds or currents, the rate of increase or decrease in speed, usually in the vertical; or the curve that represents this rate.

HURRICANE: A cyclonic storm, usually of tropic origin, covering an extensive area, and containing winds in excess of 75 miles per hour.

LITTORAL: (1) Of, or pertaining to, a shore, especially a seashore. (2) Living on, or occurring on, the shore.

LITTORAL CURRENTS: A current running parallel to the beach and generally caused by waves striking the shore at an angle.

LITTORAL DEPOSITS: Deposits of littoral drift.

LITTORAL DRIFT: (1) The sedimentary material moved in the littoral zone under the influence of waves and currents. (2) The mud, sand, or gravel material moved parallel to the shoreline in the nearshore zone by waves and currents.

LITTORAL TRANSPORT: The movement of littoral drift in the littoral zone by waves and currents. Includes movement parallel (long shore drift) and sometimes also perpendicular (cross-shore transport) to the shore.

LITTORAL TRANSPORT RATE: The rate of transport of sedimentary material parallel to or perpendicular to the shore in the littoral zone. Usually expressed in cubic meters (yards) per year. Commonly used as synonymous with longshore transport rate.

LITTORAL ZONE: An indefinite zone extending seaward from the shoreline to just beyond the breaker zone.

LOWER LOW WATER DATUM: An approximation to the plane of mean lower low water that has been adopted as a standard reference plane for a limited area and is retained for an indefinite period regardless of the fact that it may differ slightly from a better determination of mean lower low water from a subsequent series of observations.

MEAN HIGH WATER (MHW): The average elevation of all high waters recorded at a particular point or station over a considerable period of time, usually 19 years. For shorter periods of observation, corrections are applied to eliminate known variations and reduce the result to the equivalent of a mean 19-year value. All high water heights are included in the average where the type of tide is either semidiurnal or mixed. Only the higher high water heights are included in the average where the type of tide is diurnal. So determined, mean high water in the latter case is the same as mean higher high water.

MEAN LOWER LOW WATER (MLLW): The average height of the lower low waters over a 19-year period. For shorter periods of observation, corrections are applied to eliminate known variations and reduce the result to the equivalent of a mean 19-year value.

NATIONAL FLOOD INSURANCE PROGRAM (NFIP): The program of flood insurance coverage and floodplain management administered under the Act and applicable federal regulations promulgated in Title 44 of the Code of Federal Regulations, Subchapter B.

NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88) : Datum used as a basis for measuring flood, ground, and structural elevations, previously referred to as Sea Level Datum or Mean Sea Level. The Base Flood Elevations shown on most of the Flood Insurance Rate Maps issued by the Federal Emergency Management Agency are referenced to NAVD 88.

NEARSHORE: (1) In beach terminology an indefinite zone extending seaward from the shoreline well beyond the breaker zone. (2) The zone which extends from the swash zone to the position marking the start of the offshore zone, typically at water depths of the order of 20 meters.

NOURISHMENT: The process of replenishing a beach. It may be brought about naturally, by longshore transport, or artificially by the deposition of dredged materials.

OVERTOPPING: Water carried over the top of a coastal defense due to wave run-up or surge action exceeding the crest height.

OVERWASH: (1) The part of the uprush that runs over the crest of a berm or structure and does not flow directly back to the ocean or lake. (2) The effect of waves overtopping a coastal defense, often carrying sediment landwards which is then lost to the beach system.

SAND: An unconsolidated (geologically) mixture of inorganic soil (that may include disintegrated shells and coral) consisting of small but easily distinguishable grains ranging in size from about .062 mm to 2.0 mm.

SAND DUNE: See "dune."

SEDIMENT: (1) Loose, fragments of rocks, minerals or organic material which are transported from their source for varying distances and deposited by air, wind, ice and water. Other sediments are precipitated from the overlying water or form chemically, in place. Sediment includes all the unconsolidated materials on the sea floor. (2) The fine grained material deposited by water or wind.

SEDIMENT TRANSPORT: The main agencies by which sedimentary materials are moved are: gravity (gravity transport); running water (rivers and streams); ice (glaciers); wind; the sea (currents and longshore drift). Running water and wind are the most widespread transporting agents. In both cases, three mechanisms operate, although the particle size of the transported material involved is very different, owing to the differences in density and viscosity of air and water. The three processes are: rolling or traction, in which the particle moves along the bed but is too heavy to be lifted from it; saltation; and suspension, in which particles remain permanently above the bed, sustained there by the turbulent flow of the air or water.

SLOPE: The degree of inclination to the horizontal. Usually expressed as a ratio, such as 1:25, indicating one unit rise in 25 units of horizontal distance; or in a decimal fraction (0.04). Also called gradient.

SPECIAL FLOOD HAZARD AREA (SFHA): The land in the floodplain subject to a one percent (1%) or greater annual chance of being flooded. These are designated as AE, AH, VE, and Coastal A on the FIRM.

STILLWATER LEVEL (SWL): The surface of the water if all wave and wind action were to cease. In deep water this level approximates the midpoint of the wave height. In shallow water it is nearer to the trough than the crest. Also called the undisturbed water level.

SURGE: (1) Long-interval variations in velocity and pressure in fluid flow, not necessarily periodic, perhaps even transient in nature. (2) The name applied to wave motion with a period intermediate between that of an ordinary wind wave and that of the tide. (3) Changes in water level as a result of meteorological forcing (wind, high or low barometric pressure) causing a difference between the recorded water level and that predicted using harmonic analysis, may be positive or negative.

TOE: (1) Lowest part of sea- and portside breakwater slope, generally forming the transition to the seabed. (2) The point of break in slope between a dune and a beach face.

UNDERCUTTING: erosion of material at the foot of a cliff or bank, e.g., a sea cliff, or river bank on the outside of a meander. Ultimately, the overhang collapses, and the process is repeated.

WAVE: (1) An oscillatory movement in a body of water manifested by an alternate rise and fall of the surface. (2) A disturbance of the surface of a liquid body, as the ocean, in the form of a ridge, swell or hump. (3) The term wave by itself usually refers to the term surface gravity wave (progressive).

WIND SETUP: (1) The vertical rise in the stillwater level on the leeward side of a body of water caused by wind stresses on the surface of the water. (2) The difference in stillwater levels on the windward and the leeward sides of a body of water caused by wind stresses on the surface of the water. (3) Synonymous with wind tide and storm surge. Storm surge is usually reserved for use on the ocean and large bodies of water. Wind setup is usually reserved for use on reservoirs and smaller bodies of water.

ACRONYMS

BFE – Base Flood Elevation

CBCMA - Chesapeake Bay Coastal Management Area

CHHA - Coastal High Hazard Area

CMRB – Coastal Management and Review Board

FEMA – Federal Emergency Management Agency

FIRM – Flood Insurance Rate Map

LIDAR – Light Detection and Ranging

NFIP – National Flood Insurance Program

PFD – Primary Frontal Dune

SBEACH – Storm-induced Beach Change mode

SFHA - Special Flood Hazard Area

SMP – Sand Management Plan

USACE – United States Army Corps of Engineers

VIMS – Virginia Institute of Marine Science

VMRC – Virginia Marine Resources Commission

Exhibit B

IMPLEMENTATION ITEM		ACTION	LEAD RESPONSIBILITY	TIMEFRAME FOR COMPLETION	COST CATEGORY	COMMENTS
Environmental Sustainability Goal 1. Ensure high quality natural resources.						
Outcome ES1.3. An ecosystem that supports a diversity of plant and animal life.	ES1.3.7	Implement the Sand Management Plan (SMP) Guidance Document (Appendix B) to promote sand dune and beach stability, functionality, and resiliency while promoting the economic vitality and ecological resiliency of the Ocean View urban beach community and recognizing that the bayfront has a variety of distinct physical and geographic characteristics, each with unique preservation and maintenance issues.	PW	Ongoing	Over $1 Million	

05/31/2016 lds

Form and Correctness Approved:

By
Office of the City Attorney

Contents Approved:

By
DEPT.

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 49, ARTICLE III OF THE CODE OF THE CITY OF NORFOLK, VIRGINIA, 1979, SO AS TO ESTABLISH A COASTAL MANAGEMENT AND REVIEW BOARD, TO REVISE THE PROCESS FOR DESIGNATING THE MEMBERSHIP OF THE EROSION ADVISORY COMMISSION, AND TO REPEAL THE EXISTING COASTAL PRIMARY SAND DUNE ZONING ORDINANCE.

- - -

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

Section 1:- That Chapter 49, Article IV of the Norfolk City Code, 1979 shall be amended to revise the process for designating the membership of the erosion advisory commission. The amended language shall read as follows:

ARTICLE IV. - EROSION ADVISORY COMMISSION

Sec. 49-34. - Creation, composition, and compensation of members.

Pursuant to the provisions of section 10.1-711 of the Code of Virginia, 1950, as amended, there is hereby created a commission to be known as the erosion advisory commission, which shall consist of the following seven (7) members, who shall serve as such without compensation:

(1) The three (3) civic league representatives who are the current members of the Coastal Management and Review Board established pursuant to Article V, below.

(2) The two (2) city council representatives who are the current members of the Coastal Management and Review Board established pursuant to Article V, below.

(3) The City's chief resiliency officer or, if no such officer exists, the City Manager or his designee.

(4) The Director of the Department of Public Works or his authorized designee.

Sec. 49-35. - Reserved.

Sec. 49-36. - Duties.

The erosion advisory commission shall have the duties that are set forth in section 10.1-711 of the Code of Virginia, 1950, as amended, and shall act in an advisory capacity to the director of the department of city planning and codes administration on the following:

(1) Determination of erosion problems on city beaches.

(2) Determination of erosion control strategies.

(3) Assessment of erosion control program implementation.

(4) Participation in grant application procedures as may be required by the Virginia Board on Conservation and Development of Public Beaches.

Sec. 49-37. - Chairperson; meetings, quorum.

The erosion advisory commission shall elect a chairperson from its membership who shall serve one year terms as such and may succeed himself or herself. Four (4) members of the commission shall constitute a quorum for the transaction of business.

Section 2:- That, pursuant to Section 141 of the Charter of the City of Norfolk, 1958 (as amended), the Coastal Management and Review Board is hereby created and shall have membership, duties and responsibilities as set forth the Norfolk City Code, 1979, as amended and reordained herein and hereby.

Section 3:- That Chapter 49 of the Norfolk City Code, 1979 shall be amended and reordained so as to add a new article, to be designated as Article V and consisting of sections 49-38 through 49-41, inclusive, establishing a Coastal Management and Review Board with certain membership, duties and responsibilities. The new article shall read as follows:

ARTICLE V. - COASTAL MANAGEMENT AND REVIEW BOARD

Sec. 49-38. - Creation and composition.

The coastal management and review board (CMRB) is created to monitor changes in the beach and dune environment and to assess the progress of management projects that may be undertaken pursuant to any adopted sand management plan designed to comprehensively address the beaches and dunes along the Chesapeake Bay shore in order to evaluate and report on the efficacy of such projects. The board shall consist of the following twelve (12) members who shall serve without compensation:

(1) Two (2) members of the city council designated by the council from among the following persons:

(a) The councilperson representing Ward 1,

(b) The councilperson representing Ward 5,

(c) The councilperson representing Superward 6, and

(d) The mayor.

(2) The president of the East Ocean View Civic League or his designee.

(3) The president of the Cottage Line Civic League or his designee.

(4) The president of the Willoughby Civic League of his designee.

(5) A member of the staff of the Department of Public Works, as designated by the director.

(6) A member of the staff of the Department of City Planning, as designated by the director.

(7) A member of the staff of the office of the city manager, as designated by the manager.

(8) A representative from Department of the Ocean, Earth & Atmospheric Sciences of Old Dominion University, as designated by the department chair.

(9) A staff member of the Virginia Marine Resources Commission, Habitat Management Division, designated by the Chief of Habitat Management.

(10) A staff member of the Army Corp of Engineers, Norfolk District, designated by the District Engineer.

(11) A staff member of the Virginia Institute of Marine Science, designated by the director.

Sec. 49-39. - Designations shall be biennial; vacancies.

The designation for each member of the CMRB shall be effective for two (2) years. Any vacancy in a seat shall be filled, by selection of the designor wherever a designation is required, for the remainder of the unexpired term

Sec. 49-40. - Meetings.

Meetings shall be held at least twice each year. Additional meetings may be held for the purpose of reviewing any information or project where review at the next regular meeting would result in a delay which would likely cause a significant increase in cost or would continue exposing persons or property to an existing threat of injury or damage for an extended period of time.

Sec. 49-41. - Duties and responsibilities.

The CMRB has the following duties and responsibilities:

(1) Initiate and recommend amendments to any adopted sand management plan. No changes to such a plan should be made without a review and recommendation from the CMRB prior to consideration by the city planning commission or the city council.

(2) Receive and review annual reports which provide the following information:

(a) Topographical or LIDAR surveys showing any changes to the beach and dune

environment, including erosion and accretion.

(b) Dune planting success and mortality and progress of invasive vegetation eradication efforts.

(c) Beach nourishment projects.

(d) Dune blowout repairs and other alteration activity in a dune.

(e) Sand fence locations and effects.

(f) Breakwater modification and performance measures.

(g) Effects of seasonal storms impacts.

(h) Alterations to, construction of, and removal of any beach access.

(i) Alterations to the profile of the crest or front face of a dune.

(j) Other projects or activities that impact the health or use of the dune environment.

(3) Make recommendations to the city manager regarding policies and procedures for:

(a) Adopt-a-Dune program to promote education and responsible stewardship of the shoreline environment.

(b) Instructional or written materials to assist citizens with appropriate dune vegetation plantings.

(c) Instructional events or written materials to assist citizens with maintenance of noncommercial beach access walkways.

(d) Conducting training for citizens to assist city field operations for eradicating invasive vegetation by identifying and locating problem areas.

(e) Guidelines for appropriate methods of performing other activities that are exempt from regulation under the provisions of Title 28.2, Chapter 14 of the Code of Virginia related to Coastal Primary Sand Dunes and Beaches.

(4) Review and recommend approval or denial of nonemergency construction of beach accesses.

Section 4:- That the existing Coastal Primary Sand Dune Zoning Ordinance, found at Chapter 49, Article III of the Norfolk City Code, 1979 and consisting of sections 49-18 through 49-33, inclusive, is hereby repealed.

Section 5:- That this ordinance shall become effective on July 1, 2016.

City of NORFOLK

C: Dir., Department of City Planning

To the Honorable Council
City of Norfolk, Virginia

June 28, 2016

From: George M. Homewood, FAICP, CFM, Planning Director

Subject: **Change of Zoning from IN-1 (Institutional) to BC-1 (Business and Commerce Park) – 900 and 901 Asbury Avenue**

Reviewed: _____ **Ward/Superward: 3/7**
Ronald H. Williams, Jr., Deputy City Manager

Approved: _____ **Item Number:** **PH-3**
Marcus D. Jones, City Manager

I. **Staff Recommendation:** **Approval**.

II. **Commission Action:** By a vote of **7 to 0**, the Planning Commission recommends **Approval** of the request.

III. **Request:** Change of zoning to allow the lots to be developed for a biomedical imaging company.

IV. **Applicant:** **City of Norfolk**

V. **Description:**

- This rezoning consist of two parcels:
  - 900 Asbury Avenue is developed with the Oakwood Elementary School which is no longer in operation.
  - 901 Asbury Avenue contains the Police Department's Third Patrol Division operation and is surrounded by the Business and Commerce Park.
- The City will no longer utilize the school building and is proposing to rezone this property to allow for the relocation of a biomedical company currently operating in Norfolk.
  - The school would be demolished.
- The Police Department's site and building would remain unchanged, and is permitted under the proposed BC-1 zoning.

Staff point of contact: Susan Pollock at 664-4765, susan.pollock@norfolk.gov

Attachments:

- Staff Report to CPC dated May 26, 2016 with attachments
- Proponents and Opponents
- Ordinance

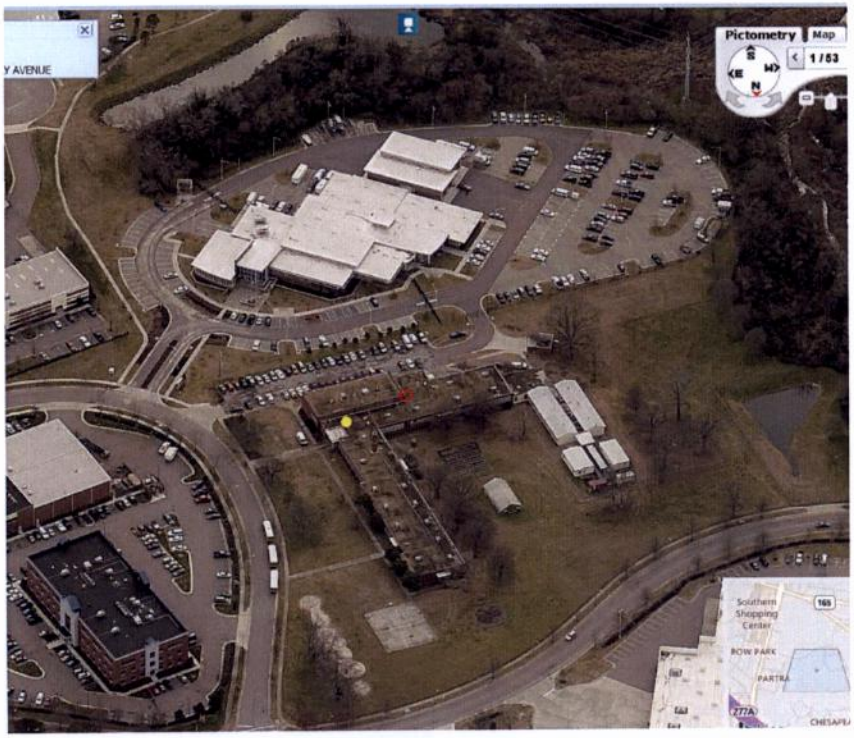
THE CITY OF NORFOLK
CITY PLANNING

Planning Commission Public Hearing: May 26, 2016

Executive Secretary: George M. Homewood, FAICP, CFM

Planner: Susan Pollock Hart, CFM

Staff Report	**Item No. 1**	
Address	**900 and 901 Asbury Avenue**	
Applicant	**City of Norfolk**	
Request	**Plan Amendment**	**Institutional to Office**
	Change of Zoning	**IN-1 (Institutional) to BC-1 (Business and Commerce Park)**
Property Owner	City of Norfolk	
Site Characteristics	Site Area	15.9 Acres
	Future Land Use Map	Institutional
	Zoning	IN-1
	Neighborhood	None
	Character District	Suburban
Surrounding Area	North	C-2 (Corridor Commercial): Walmart Shopping Center
	East	BC-2: Offices
	South	BC-2: Offices
	West	R-13 (Moderately High Density Multi-Family): Apartments



A. Summary of Request

- The properties are located on the southwest corner of Stanley Street and Asbury Avenue
- This request would rezone the former Oakwood Elementary School and the Police Department's Third Patrol Division to accommodate a the retention of an existing norfolk business and expand the Business and Commerce district.

B. Plan Analysis

- *plaNorfolk2030* designates this site as institutional, making the proposed use inconsistent with *plaNorfolk2030*.
  - An amendment to office is necessary for the proposed use to be consistent with *plaNorfolk2030*.
- The identifying land use strategies chapter of *plaNorfolk2030* identifies the office land use category as a location for a variety of office-type uses, often developed as complexes along arterial roadways, with internal street networks and amenities.
- The enhancing economic vitality chapter of *plaNorfolk2030* calls for the intensification of land use in the identified strategic economic development areas and calls for infrastructure investments to attract and maintain businesses.
  - Central Business Park is identified as a strategic economic development area.
- Since the purpose of the request is to accommodate the expansion of Central Business Park, the proposed plan amendment is appropriate.
- If the plan amendment is approved, the request would be consistent with *plaNorfolk2030*.

C. Zoning Analysis

i. General

- This rezoning consist of two parcels:
  - 900 Asbury Avenue is developed with the Oakwood Elementary School which is no longer in operation.
  - 901 Asbury Avenue contains the Police Department's Third Patrol Division operation and is surrounded by the Business and Commerce Park.
- The City will no longer utilize the school building and is proposing to rezone this property to allow for the relocation of a biomedical company currently operating in Norfolk.
  - The school would be demolished.
- The Police Department's site and building would remain unchanged, and is permitted under the proposed BC-1 zoning.

ii. Parking

Development of the former school site would require Site Plan Review which would require compliance with current parking regulations.

iii. Flood Zone

The property is in the X (Low to Moderate) Flood Zone, which is not a designated flood zone.

iv. Historic Analysis

The existing school is not in any historic district.

D. Transportation Impacts

N/A

E. Environmental Impacts

- The development of the site requires approval through the Site Plan Review process and will meet City stormwater, landscaping and other physical development requirements.
- Water quality for the site will be improved by meeting the state stormwater standards in the site plan review process.
    - A reduction in impervious surface will be required to meet open space, landscaping and stormwater requirements.
- On-site flooding issues will also be improved by meeting the state stormwater standards.

F. Surrounding Area/Site Impacts

N/A

G. Payment of Taxes

The property is currently non-taxable.

H. Civic League

N/A

I. Communication Outreach/Notification

- Legal notice was posted on the property on April 19.
- Letters were mailed to all property owners within 300 feet of the property on May 13.
- Legal notification was placed in *The Virginian-Pilot* on May 12 and May 19.

J. Recommendation

Staff recommends that the requests for the Plan Amendment and rezoning be **approved**.

Attachments

Location Map
Future Land Use Map
Zoning Map
Application

Proponents and Opponents

Proponents
None

Opponents
None

05/24/2016 lds

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

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 PROPERTIES LOCATED AT 900 AND 901 ASBURY AVENUE FROM INSTITUTIONAL TO OFFICE.

- - -

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 properties located at 900 and 901 Asbury Avenue is hereby changed from Institutional to Office. The properties which are the subject of this change in land use designation are more fully described as follow:

> Properties fronting 990 feet, more or less, along the western line of Asbury Avenue and 708 feet, more or less, along the southern line of Central Business Park Drive; premises numbered 900 and 901 Asbury 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.

05/24/2016 lds

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT.

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE TO REZONE PROPERTIES LOCATED AT 900 AND 901 ASBURY AVENUE FROM IN-1 (INSTITUTIONAL) DISTRICT TO BC-1 (BUSINESS AND COMMERCE PARK) DISTRICT.

- - -

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

Section 1:- That the properties located at 900 and 901 Asbury Avenue are hereby rezoned from IN-1 (Institutional) District to BC-1 (Business and Commerce Park) District. The properties which are the subject of this rezoning are more fully described as follows:

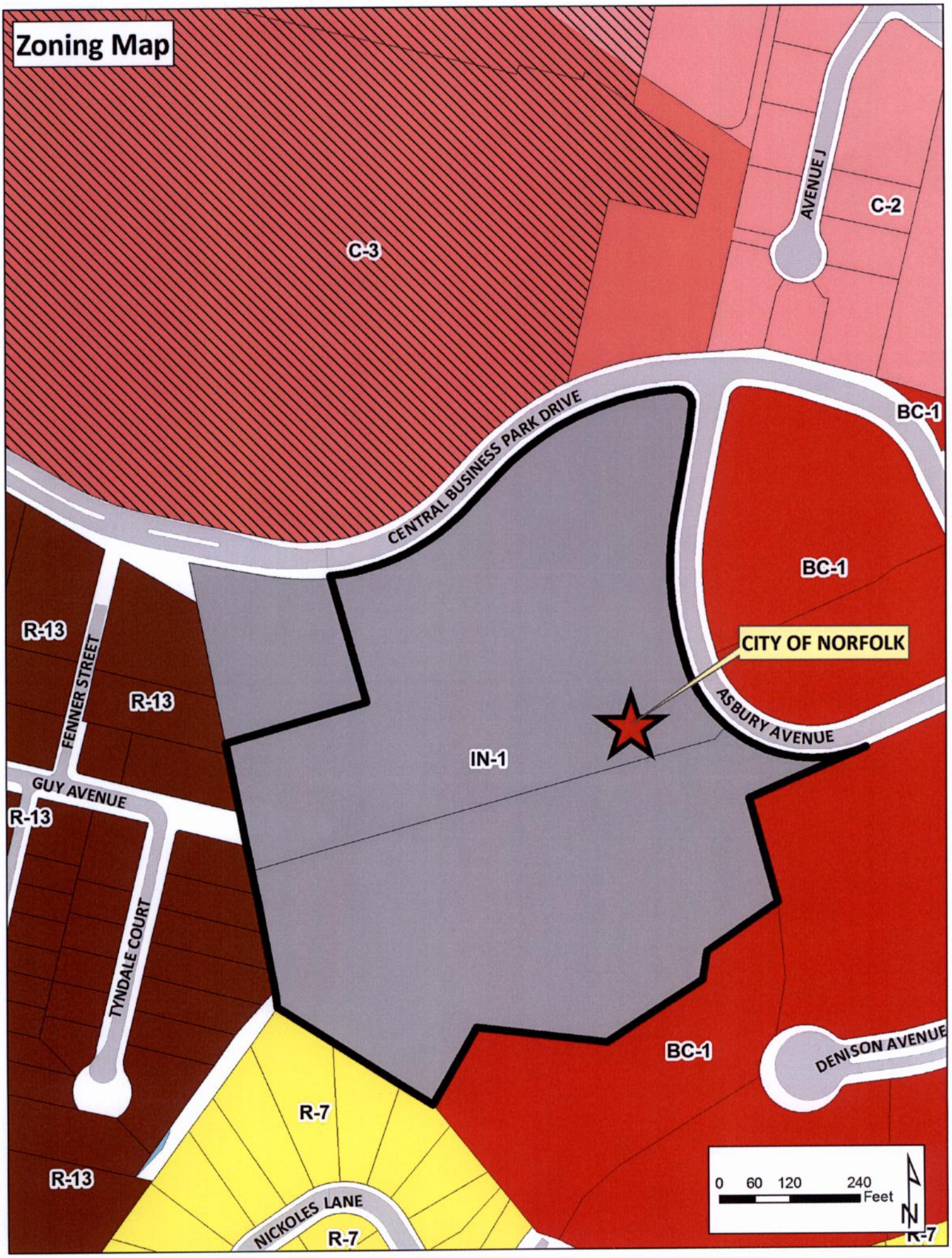
> Properties fronting 990 feet, more or less, along the western line of Asbury Avenue and 708 feet, more or less, along the southern line of Central Business Park Drive; premises numbered 900 and 901 Asbury Avenue.

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

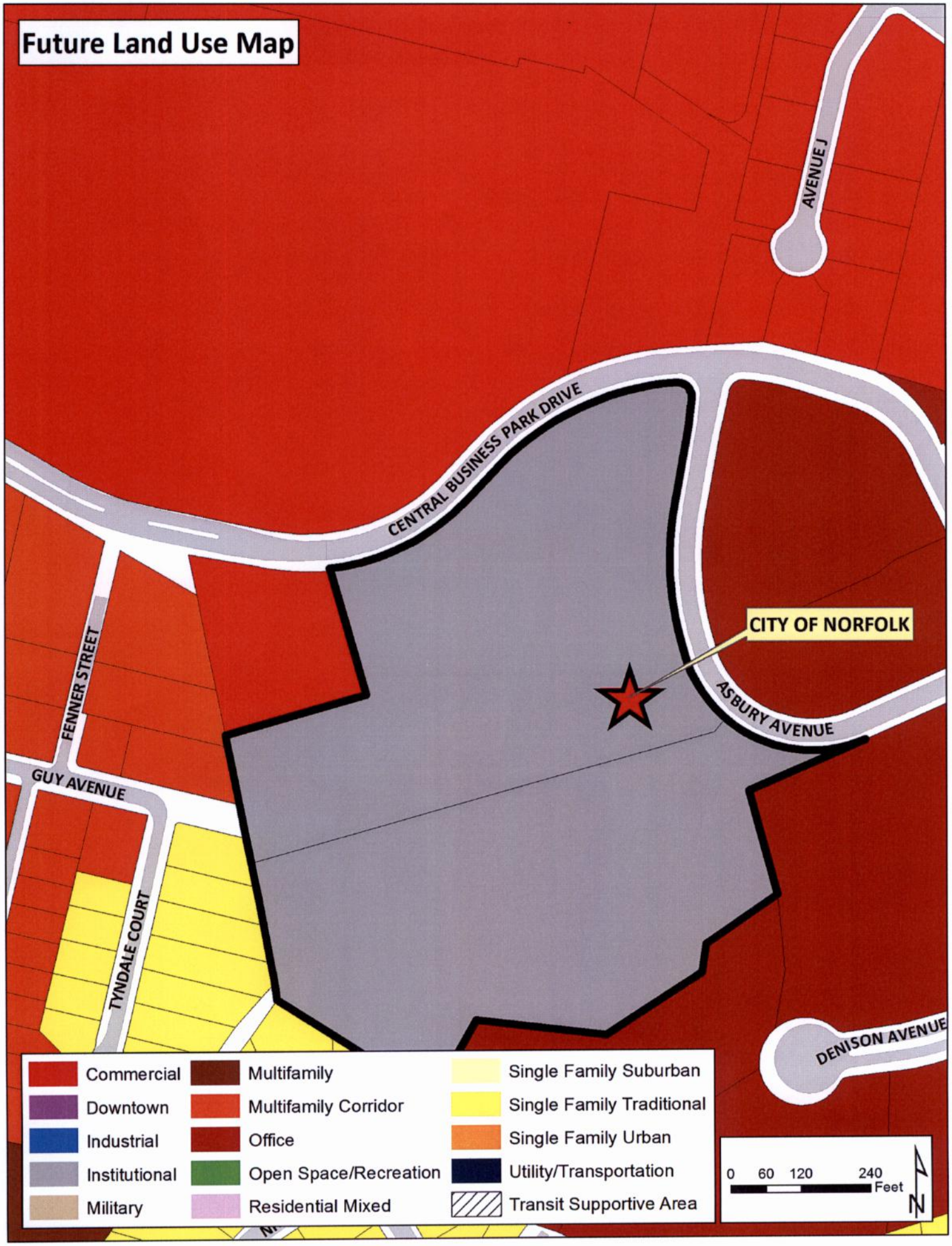
Section 3:- The Council hereby finds that this zoning amendment is required by public necessity, convenience, general welfare, or good zoning practice.

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

Location Map
CENTRAL BUSINESS PARK DRIVE
ASBURY AVENUE
CITY OF NORFOLK
0 45 90 180
Feet
N


Zoning Map
C-3
C-2
AVENUE J
CENTRAL BUSINESS PARK DRIVE
BC-1
BC-1
CITY OF NORFOLK
ASBURY AVENUE
IN-1
R-13
FENNER STREET
R-13
GUY AVENUE
R-13
TYNDALE COURT
BC-1
DENISON AVENUE
R-7
R-13
NICKOLES LANE
R-7
R-7
0 60 120 240
Feet
N

Future Land Use Map



APPLICATION
CHANGE OF ZONING

Date of application: 4/11/16

Change of Zoning

From: IN-1 **Zoning** **To:** BC-1 **Zoning**

DESCRIPTION OF PROPERTY

Property location: (Street Number) 900 (Street Name) Asbury Ave.

Existing Use of Property: former elementary school

Current Building Square Footage 43,549 SF

Proposed Use _____

Proposed Building Square Footage _____

Trade Name of Business (If applicable) _____

APPLICANT
(If applicant is a LLC or a Corp./Inc., include name of official representative and/or all partners)

1. Name of applicant: (Last) City of Norfolk (First) _____ (MI) _____

Mailing address of applicant (Street/P.O. Box): 810 Union Street

(City) Norfolk (State) VA (Zip Code) 23510

Daytime telephone number of applicant ( ) _____ Fax ( ) _____

E-mail address of applicant: _____

DEPARTMENT OF CITY PLANNING
810 Union Street, Room 508
Norfolk, Virginia 23510
Telephone (757) 664-4752 Fax (757) 441-1569
(Revised January, 2015)

AUTHORIZED AGENT (if applicable)
(If agent is a LLC or a Corp./Inc., include name of official representative and/or all partners)

2. Name of applicant: (Last) _____ (First) _____ (MI) _____

Mailing address of applicant (Street/P.O. Box): _____

(City) _____ (State) _____ (Zip Code) _____

Daytime telephone number of applicant ( ) _____ Fax ( ) _____

E-mail address of applicant: _____

PROPERTY OWNER
(If property owner is a LLC or a Corp./Inc., include name of official representative and/or all partners)

3. Name of property owner: (Last) City of Norfolk (First) _____ (MI) _____

Mailing address of property owner (Street/P.O. box): 810 Union Street

(City) Norfolk (State) VA (Zip Code) 23510

Daytime telephone number of owner ( ) _____ email: _____

CIVIC LEAGUE INFORMATION

Civic League contact: _____

Date(s) contacted: _____

Ward/Super Ward information: _____

CERTIFICATION:
I hereby submit this complete application and certify the information contained herein is true and accurate to the best of my knowledge:

Print name: Peter Chapman **Sign:** _____ / _____ / _____
(Property Owner or Authorized Agent of Signature) (Date)

Print name: Peter Chapman **Sign:** _____ / _____ / _____
(Applicant) (Date)

ONLY NEEDED IF APPLICABLE:

Print name: _____ **Sign:** _____ / _____ / _____
(Authorized Agent Signature) (Date)

Pollock, Susan

From: Straley, Matthew
Sent: Monday, May 02, 2016 3:58 PM
To: 'mjones176@cox.net'
Cc: Johnson, Mamie; Williams, Angelia M.; Pollock, Susan; Herbst, James
Subject: new Planning Commission application - 900 Asbury Avenue
Attachments: Asbury_rezoning.pdf

Ms. Simpson,

Attached please find the application at 900 Asbury Avenue:

a. Amendment to the future land use designation in the general plan, *plaNorfolk2030*, from Institutional to Office.
b. Change of zoning from IN-1 (Institutional) to BC-1 (Business and Commerce Park) district.

The purpose of this request is to accommodate an expansion of the Central Business Park on the site of the former Oakwood Elementary School.

The item is tentatively scheduled for the May 26, 2016 Planning Commission public hearing.

Staff contact: Susan Pollock Hart at (757) 664-4765, susan.pollock@norfolk.gov

Thank you.

Matthew Straley
GIS Technician II

THE CITY OF NORFOLK
City Planning
810 Union Street, Suite 508
Norfolk, VA 23510
757-664-4769

Connect with us:
www.norfolk.gov

City of NORFOLK

C: Dir., Department of City Planning

To the Honorable Council
City of Norfolk, Virginia

June 28, 2016

From: George M. Homewood, FAICP, CFM, Planning Director

Subject: **Change of Zoning from R-8 (Single-Family), C-2 (Corridor Commercial) and PCO-Riverview (Riverview Pedestrian Commercial Overlay) to conditional C-2 (Corridor Commercial) and PCO-Riverview (Riverview Pedestrian Commercial Overlay)**

Reviewed: _____ **Ward/Superward**: 2/6
Ronald H. Williams, Jr., Deputy City Manager

Approved: _____ **Item Number:** **PH-4**
Marcus D. Jones, City Manager

I. **Staff Recommendation:** **Approval**.

II. **Commission Action:** By a vote of **7 to 0**, the Planning Commission recommends **Approval.**

III. **Request:** This request proposes to a change of zoning to allow development of a parking lot.

IV. **Applicant:** **Richard Levin**

V. **Description:**

- This site is composed of two parcels; the one abutting Granby Street is currently zoned C-2/PCO-Riverview and the second lot, abutting the first lot to the rear/east is zoned R-8 (Single-Family).
- The applicant proposes to conditionally rezone both parcels (except for a 50 by 100 foot parcel abutting Columbus Avenue) to allow the site to be developed with a parking lot.
  - The zoning of the 50 by 100 foot lot abutting Columbus Avenue will remain R-8 (Single-Family) and be developed with a single-family home.
  - The parking lot will not be accessed in any manner from the residential lot.
  - The applicant has conditioned the rezoning to development of a parking lot.
- The applicant has submitted a re-subdivision plat which would combine the lot fronting on Granby Street and the one to the rear of that into one parcel while subdividing the 50 by 100 foot lot into a separate lot.
  - Should the conditional rezoning request be approved by Council, the review of the re-subdivision will begin.

VI. **Historic Resources Impacts:**

N/A

VII. Public Schools Impacts:

N/A

Staff point of contact: Susan Pollock at 664-4765, susan.pollock@norfolk.gov

Attachments:

- Staff Report to CPC dated May 26, 2016 with attachments
- Proponents and Opponents
- Ordinance

THE CITY OF NORFOLK
CITY PLANNING

Planning Commission Public Hearing: May 26, 2016
Executive Secretary: George M. Homewood, FAICP, CFM
Planner: Susan Pollock Hart, CFM

Staff Report	**Item No. C - 2**	
Addresses	**3920 Granby Street and 3917 Columbus Avenue**	
Applicant	**Richard Levin**	
	Conditional Rezoning	**From R-8 (Single-Family), C-2 (Corridor Commercial) and PCO-Riverview (Riverview Pedestrian Commercial Overlay) to conditional C-2 (Corridor Commercial) and PCO-Riverview (Riverview Pedestrian Commercial Overlay)**
Property Owner	3920 Granby, LLC	
Site Characteristics	Site Area	1.4 Acres
	Future Land Use Map	• Commercial (3920 Granby Street) • Single-Family Traditional (3917 Columbus Avenue)
	Zoning	• C-2 (Corridor Commercial) and PCO-Riverview (Riverview Pedestrian Commercial Overlay): 3920 Granby Street • R-8 (Single-Family): 3917 Columbus Avenue
	Neighborhood	Colonial Place/Riverview
	Character District	Traditional
Surrounding Area	North	C-2/Riverview PCO: Big Al's Mufflers and Brakes; R-11 (Moderate Density Multi-Family): Hermitage Methodist Homes assisted living facility
	East	R-8: Single-family homes
	South	C-2/Riverview PCO; Riverview Theater; R-8: Single-family homes
	West	R-15 (High Density Multi-Family): Apartments

A. Summary of Request

- The property is located on the east side of Granby Street between East 39th and East 40th Streets.
- The applicant proposes to rezone the property to allow for it to be developed with a parking lot.

B. Plan Consistency

Analysis

- *plaNorfolk2030* designates the western portion of this property, adjacent to Granby Street, Commercial while the eastern portion is designated Single-Family traditional.
  - While the construction of a commercial parking lot is not typically appropriate in the Single-Family traditional designation, given that a large portion of the property is designated commercial the proposed use can be supported by *plaNorfolk2030*.

C. Zoning Analysis

i. General

- This site is composed of two parcels; the one abutting Granby Street is currently zoned C-2/PCO-Riverview and the second lot, abutting the first lot to the rear/east is zoned R-8 (Single-Family).
- The applicant proposes to conditionally rezone both parcels (except for a 50 by 100 foot parcel abutting Columbus Avenue) to allow the site to be developed with a parking lot.
  - The zoning of the 50 by 100 foot lot abutting Columbus Avenue will remain R-8 (Single-Family) and be developed with a single-family home.
  - The parking lot will not be accessed in any manner from the residential lot.
  - The applicant has conditioned the rezoning to development of a parking lot.
- The applicant has submitted a re-subdivision plat which would combine the lot fronting on Granby Street and the one to the rear of that into one parcel while subdividing the 50 by 100 foot lot into a separate lot.
  - Should the conditional rezoning request be approved by Council, the review of the re-subdivision will begin.

ii. Parking

- The applicant owns the Riverview Theater which abuts this site to the south.
- The proposed parking lot would provide parking for the theater as well as the businesses in the Riverview Commercial District.

iii. Flood Zone

The property is located in the X (Low to Moderate) zone which is not considered a special flood hazard area.

D. Transportation Impacts

N/A

E. Historic Resources Impacts

The site and the adjacent Riverview Theater are not located within a federal, state, or local historic district, however, the Theater was built in 1947 and would be eligible for consideration.

F. Public Schools Impacts

N/A

G. Environmental Impacts

The proposed additions and site modifications will undergo the Site Plan Review process, which will require all site development to adhere to the regulations of the *Zoning Ordinance*, including landscaping, vehicular circulation, and stormwater improvements.

H. AICUZ Impacts

N/A

I. Surrounding Area/Site Impacts

- This site is located in the Riverview Commercial District which has limited on-site and off-site parking.
- The proposed parking lot should serve to provide needed parking for both any potential user of the adjacent theater as well as other tenants along the corridor.

J. Payment of Taxes

The owner of the property is current on all real estate taxes.

K. Civic League

- Notice was sent to the Colonial Place/Riverview Civic League on March 16.
- The applicant attended the April 11 Civic League meeting where they voted to support the request.

L. Communication Outreach/Notification

- Legal notice was posted on the property on April 19.
- Letters were mailed to all property owners within 300 feet of the property on May 13.
- Legal notification was placed in *The Virginian-Pilot* on May 12 and May 19.

M. Recommendation

Staff recommends **approval** of the conditional rezoning request, subject to the proffered condition below:

a) The site shall be designed generally in accordance with the conceptual site plan attached hereto and marked as "Exhibit A," subject to any revisions required by the city to be made during the Site Plan Review and building permit plan review processes.

Attachments

- Location Map
- Future Land Use Map
- Zoning Map
- Application
- Notice to the Civic League

Proponents and Opponents

Proponents:
Richard Levin
2106 Llewellyn Avenue
Norfolk, VA 23517

Opponents:
None

05/27/2016 lds

Form and Correctness Approved: RAP

By _____
Office of the City Attorney

Contents Approved: SP

By _____
DEPT.

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE TO REZONE PROPERTIES LOCATED AT 3920 GRANBY STREET AND 3917 COLUMBUS AVENUE FROM C-2 (CORRIDOR COMMERCIAL), PCO-RIVERVIEW (PEDESTRIAN COMMERCIAL OVERLAY - RIVERVIEW), AND R-9 (SINGLE-FAMILY RESIDENTIAL) DISTRICTS TO CONDITIONAL C-2 (CORRIDOR COMMERCIAL) AND PCO-RIVERVIEW (PEDESTRIAN COMMERCIAL OVERLAY - RIVERVIEW) DISTRICTS.

- - -

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

Section 1:- That the properties located at 3920 Granby Street and 3917 Columbus Avenue are hereby rezoned from C-2 (Corridor Commercial), PCO-Riverview (Pedestrian Commercial Overlay - Riverview), and R-9 (Single-Family Residential) Districts to conditional C-2 and PCO-Riverview (Pedestrian Commercial Overlay-Riverview) Districts. The properties which are the subject of this rezoning are more fully described as follows:

Properties fronting 177 feet, more or less, along the eastern line of Granby Street beginning 141 feet, more or less, from the northern line of East 39th Street and extending northwardly; properties also front 50 feet, more or less, along the western line of Columbus Avenue beginning 174 feet, more or less, from the northern line of East 39th Street and extending northwardly; premises now or formally numbered 3920 Granby Street and 3917 Columbus Avenue; but excluding the easternmost 5,000 square-foot portion of the property fronting Columbus Avenue and numbered 3917 Columbus Avenue.

Section 2:- That the properties rezoned by this ordinance shall be subject to the following condition:

(a) The property shall be improved with a parking lot in accordance with the conceptual site plan attached hereto and marked as "Exhibit A," subject to any revisions required by the city to be made during the Site Plan

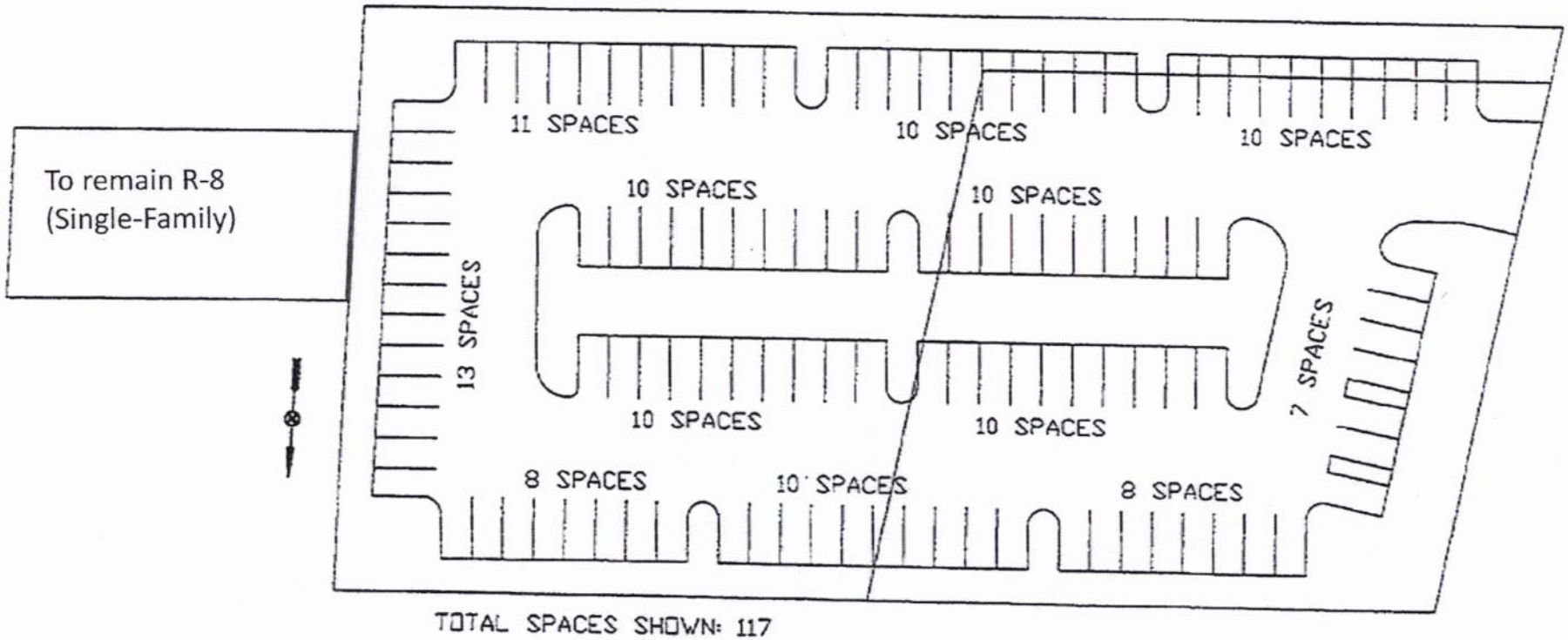
Review and building permit plan review processes.

Section 3:- That the official Zoning Map for the City of Norfolk is hereby amended and reordained so as to reflect this rezoning.

Section 4:- The Council hereby finds that this zoning amendment is required by public necessity, convenience, general welfare, or good zoning practice.

Section 5:- That this ordinance shall be in effect from the date of its adoption.

ATTACHMENT:
Exhibit A (1 page)

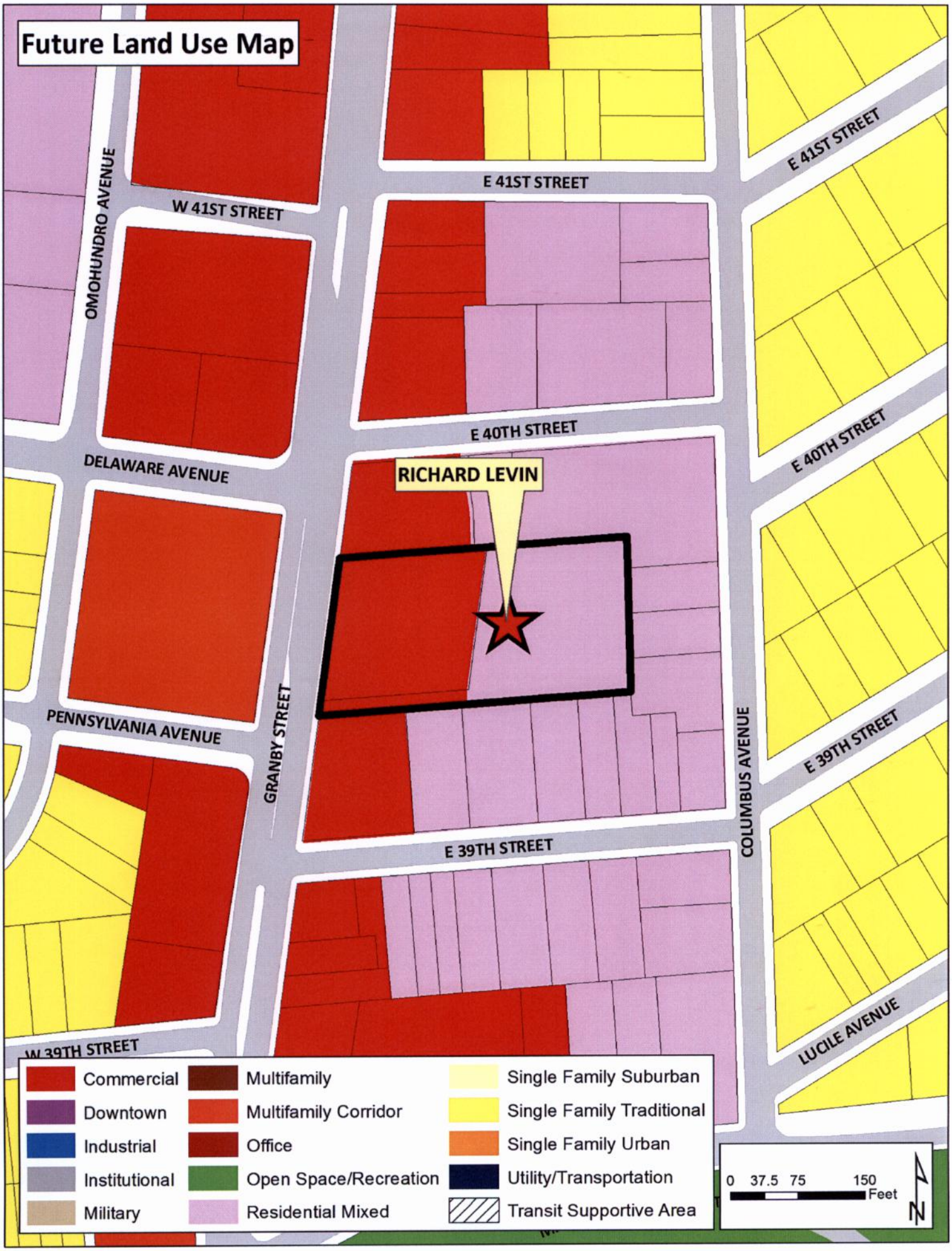


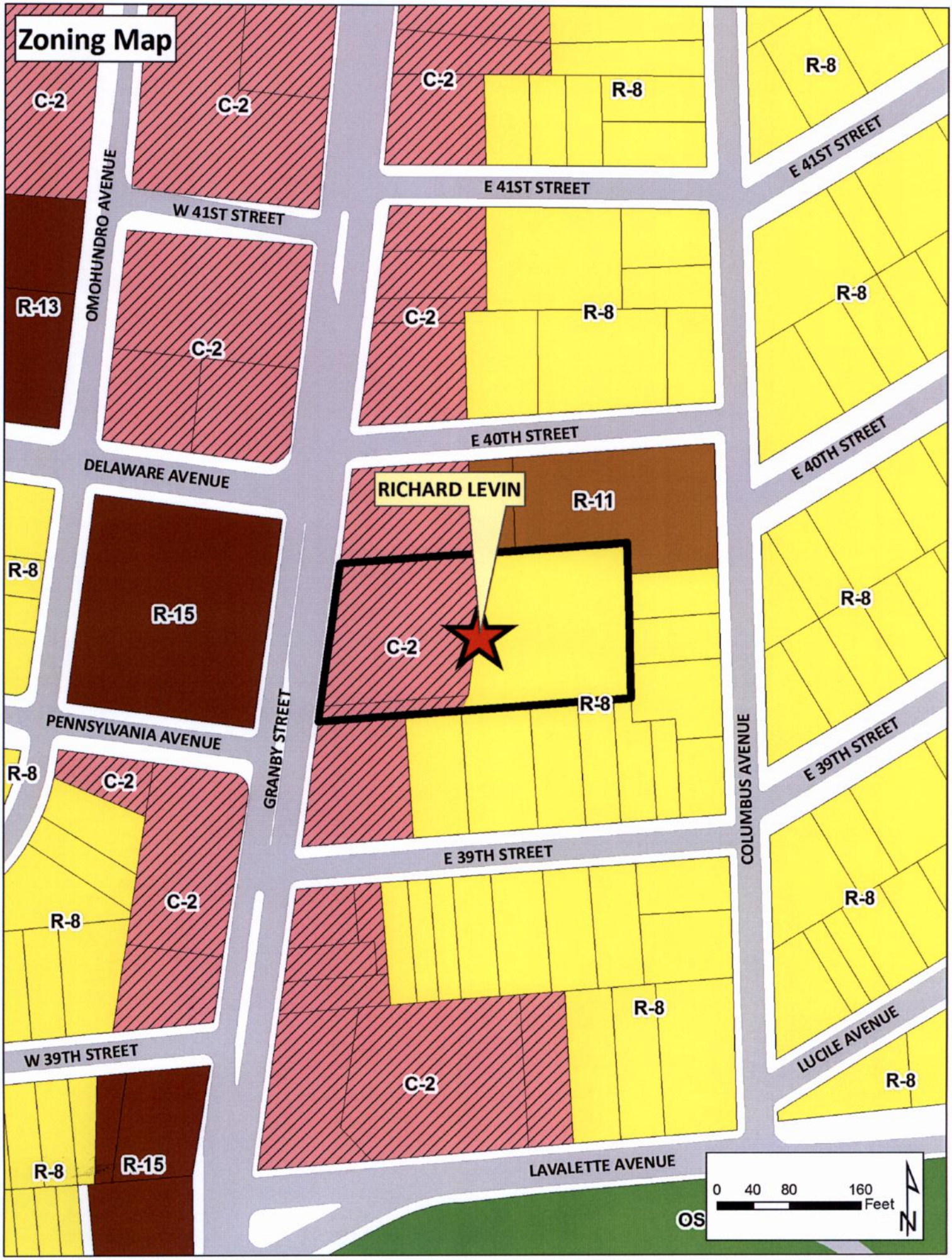
RIVERVIEW PARKING

1" = 50'-0"

Exhibit A

Location Map
E 40TH STREET
COLUMBUS AVENUE
RICHARD LEVIN
GRANBY STREET
E 39TH STREET
0 20 40 80
Feet
N


Future Land Use Map
RICHARD LEVIN
E 41ST STREET
W 41ST STREET
E 41ST STREET
OMOHUNDRO AVENUE
E 40TH STREET
E 40TH STREET
DELAWARE AVENUE
PENNSYLVANIA AVENUE
GRANBY STREET
COLUMBUS AVENUE
E 39TH STREET
E 39TH STREET
LUCILE AVENUE
W 39TH STREET
Commercial
Downtown
Industrial
Institutional
Military
Multifamily
Multifamily Corridor
Office
Open Space/Recreation
Residential Mixed
Single Family Suburban
Single Family Traditional
Single Family Urban
Utility/Transportation
Transit Supportive Area
0 37.5 75 150
Feet
N


Zoning Map
C-2
C-2
C-2
R-8
R-8
E 41ST STREET
E 41ST STREET
W 41ST STREET
OMOHUNDRO AVENUE
R-13
C-2
C-2
R-8
R-8
E 40TH STREET
E 40TH STREET
DELAWARE AVENUE
RICHARD LEVIN
R-11
R-8
R-15
C-2
R-8
R-8
PENNSYLVANIA AVENUE
GRANBY STREET
E 39TH STREET
R-8
C-2
C-2
R-8
E 39TH STREET
COLUMBUS AVENUE
R-8
R-8
W 39TH STREET
LUCILE AVENUE
C-2
R-8
R-8
R-15
LAVALETTE AVENUE
OS
0 40 80 160
Feet
N

APPLICATION
CONDITIONAL CHANGE OF ZONING

Date of application: 3/14/16

Conditional Change of Zoning

From: R8 **Zoning** **To: Conditional** C2 **Zoning**

DESCRIPTION OF PROPERTY 3920 Granby

Property location: (Street Number) [illegible] (Street Name) [illegible]

Parcel X-1

Existing Use of Property: Vacant lot

Current Building Square Footage NA

Proposed Use parking lot

Proposed Building Square Footage NA

Trade Name of Business (If applicable) _____

APPLICANT

(If applicant is a LLC or a Corp./Inc., include name of official representative and/or all partners)

1. Name of applicant: (Last) Levin (First) Richard (MI) G

Mailing address of applicant (Street/P.O. Box): 2106 Llewellyn Ave

(City) Norfolk (State) VA (Zip Code) 23517

Daytime telephone number of applicant (757) 630-2342 Fax ( ) _____

E-mail address of applicant: richardglevin@gmail.com

AUTHORIZED AGENT (if applicable)
(If agent is a LLC or a Corp./Inc., include name of official representative and/or all partners)

2. Name of applicant: (Last) Sullivan (First) Allan (MI) ____

Mailing address of applicant (Street/P.O. Box): 2106 Llewellyn Ave

(City) Norfolk (State) VA (Zip Code) 23517

Daytime telephone number of applicant (757) 434-3316 Fax ( ) ____

E-mail address of applicant: alsullivevt.edu

PROPERTY OWNER
(If property owner is a LLC or a Corp./Inc., include name of official representative and/or all partners)

3920 Granby LLC

3. Name of property owner: (Last) ____ (First) ____ (MI) ____

Mailing address of property owner (Street/P.O. box): 2106 Llewellyn Ave

(City) Norfolk (State) VA (Zip Code) 23517

Daytime telephone number of owner (757) 434-3316 email: alsullivevt.edu

CIVIC LEAGUE INFORMATION

Civic League contact: Ted Warren

Date(s) contacted: 3/8/16

Ward/Super Ward information: ____

REQUIRED ATTACHMENTS

- ✓ Required application fee, **$705.00** (if check, make payable to the City of Norfolk).
  - Application fee includes a non-refundable $5 technology surcharge.
  - If accompanied with a necessary map amendment to the City's adopted general plan, *plaNorfolk2030*, an additional technology surcharge of **$5** will be required.
- ✓ One 8½ x 14 inch or 11 x 17 inch copy of a physical survey, drawn to scale and showing site conditions and improvements (including portions of the right-of-way to the curb line):
  - Existing and proposed building structures
  - Driveways
  - Parking
  - Landscaping
  - Property lines (see attached example)
- ✓ One 8 ½ x 14 inch or 11 x 17 inch copy of a conceptual site plan drawn to scale and showing all proposed site improvements, landscaping, drive aisles and parking with dimensions, and proposed changes to parcel/property lines (including lease lines) if applicable.
- ✓ Proffered conditions.
- ✓ Written description and details of the operation of the business (i.e., # of employees, # of bays, reason for rezoning, etc…)

CERTIFICATION:
I hereby submit this complete application and certify the information contained herein is true and accurate to the best of my knowledge:

Print name: Richard Levin **Sign:** [signature] 3 / 14 / 16
(Property Owner) (Date)

Print name:_____ **Sign:**_____ / ____ / ____
(Applicant) (Date)

ONLY NEEDED IF APPLICABLE:

Print name: Allan Sullivan **Sign:** [signature] 3 / 14 / 16
(Authorized Agent Signature) (Date)

PROFERRED CONDITIONS

1) Parking lot to be developed in accordance with attached site plan

2)

3)

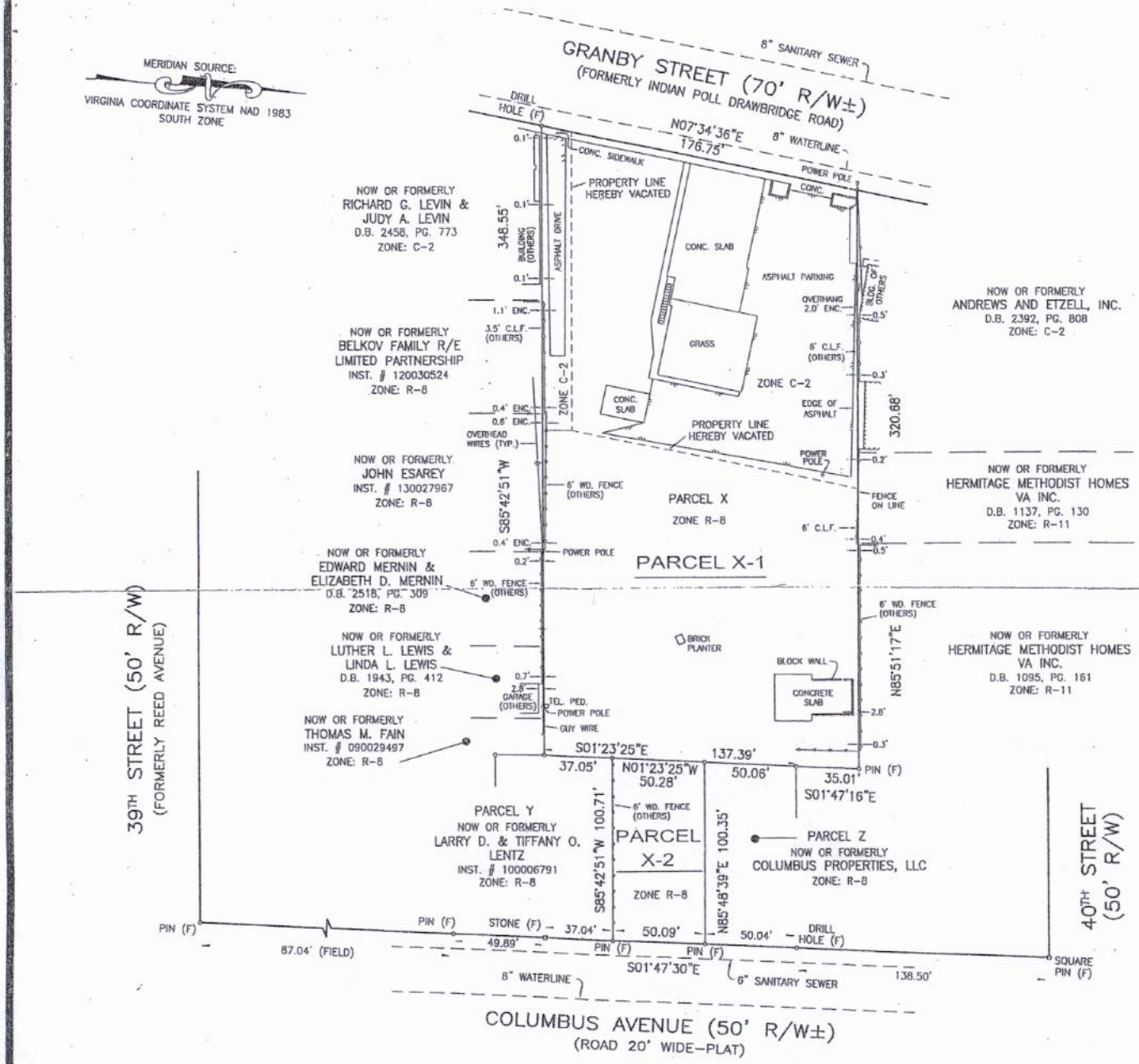
4)

5)

6)

Print name: Richard Levin (Applicant) Sign: [signature] 3/14/16 (Date)

Print name: Allan Sullivan (Property Owner or Authorized Agent of Signature) Sign: [signature] 3/14/16 (Date)



OWNER:

3920 L.L.C.
2106 LLEWELLYN AVENUE
NORFOLK, VA 23517-2237

LEGAL SOURCE:

INSTRUMENT NO. 050022386

ZONED C-2

AND

OWNER:

COLUMBUS PROPERTIES, LLC
2106 LLEWELLYN AVENUE
NORFOLK, VA 23517-2237

LEGAL SOURCE:

PARCEL X
M.B. 68, PGS. 8 AND 9

ZONED C-2, R-8

AREA OF PARCEL X-1: 57774 S.F. / 1.3263 AC.
AREA OF PARCEL X-2: 5039 S.F. / 0.1157 AC.

40' 0' 40' 80'
GRAPHIC SCALE

SCALE: 1" = 40'

PRELIMINARY SUBDIVISION

OF THE PROPERTY OF

3920 L.L.C.

INSTRUMENT NO. 050022386

AND

PARCEL X

SUBDIVISION OF A PORTION OF TRACT # 4

PLAT OF THE C.M. CRUSER FARM

AND A PORTION OF REVISED PLAT OF PROPERTY OF

W.S. CRUSER

M.B. 68, PGS. 8 AND 9

NORFOLK, VIRGINIA

STEPHEN I. BOONE & ASSOCIATES, P.C.
LAND SURVEYORS
PORTSMOUTH, VIRGINIA

DATE: AUGUST 10, 2015

City of NORFOLK

C: Dir., Department of City Planning

To the Honorable Council
City of Norfolk, Virginia

June 28, 2016

From: George M. Homewood, FAICP, CFM, Planning Director

Subject: **Norfolk Historic Landmark designation — 6651 Talbot Hall Court, Talbot Hall Manor House**

Reviewed: _____ **Ward/Superward: 1/6**
Ronald H. Williams, Jr., Deputy City Manager

Approved: _____ **Item Number:** **PH-5**
Marcus D. Jones, City Manager

I. **Staff Recommendation: Approval**.

II. **Commission Action:** By a vote of **7 to 0**, the Planning Commission recommends **Approval** of the request.

III. **Request:** Designation of the Talbot Hall Manor House as a Norfolk Historic Landmark

IV. **Applicant**: Commonwealth Preservation Group

V. **Description:**

- In 2014 an approximately 7-acre site, including the Talbot Hall Manor House, located at the intersection of Talbot Hall Road and Caroline Street adjacent to the Lafayette River was rezoned to a Residential Planned Development.
- The entire property had been zoned IN-1 (Institutional), was previously owned by the Episcopal Diocese of Southern Virginia, and was used as a retreat location for the Diocese.
- The Talbot Hall Residential Planned Development district required that the Manor House be preserved on its own lo with a minimum of two hundred linear feet along a right-of-way.
    - The property covered by the Planned Development has been subdivided and the Manor House lot complies with this requirement.
- Also in 2014, the Historic and Cultural Conservation and Historic Landmarks Chapter of the *Zoning Ordinance* was amended to allow for the creation of a Norfolk Historic Landmark designation.
- The amendment set out to address the numerous structures in Norfolk that are not located in a local, state or federal historic district, but are of historic or cultural significance and require protection against destruction and encroachment.

- Designation as a Norfolk Historic Landmark requires the following:
    - Submission of an application to the Architectural Review Board (ARB) to request that a structure or structures be designated as a Norfolk Historic Landmark.
    - Upon review of a staff report and the application, ARB provides a recommendation to the Planning Commission regarding the designation of the structure(s) as a Norfolk Historic Landmark.
    - A public hearing is held by both the Planning Commission and City Council.
    - Approval of the designation by City Council deems the structure(s) a Norfolk Historic Landmark.
    - The result is that structure is deemed historic and any modifications, additions or changes to the exterior will be required to be reviewed and approved by the Architectural Review Board.

Staff point of contact: Susan Pollock at 664-4765, susan.pollock@norfolk.gov

Attachments:

- Staff Report to CPC dated May 26, 2016 with attachments
- Proponents and Opponents
- Ordinance

THE CITY OF NORFOLK
CITY PLANNING

Planning Commission Public Hearing: May 26, 2016
Executive Secretary: George M. Homewood, FAICP, CFM
Planner: Susan Pollock, CFM

Staff Report	**Item No.** 6	
Address	**6651 Talbot Hall Court**	
Applicant	**Commonwealth Preservation Group**	
Request	**Norfolk Historic Landmark Designation**	**Talbot Hall Manor House**
Property Owner	William Dashiel	
Site Characteristics	Site Area	.42 Acres
	Future Land Use Map	Single-Family Suburban
	Zoning	PD-R Talbot Hall (Talbot Hall Residential Planned Development)
	Neighborhood	Colonial Place
	Character District	Suburban
Surrounding Area	North	PD-R Talbot Hall: Single-Family
	East	PD-R Talbot Hall; R-6: Single-family homes
	South	PD-R Talbot Hall: Single-Family
	West	PD-R Talbot Hall: Single-Family

A. Summary of Request

- The property is located at the end of Talbot Hall Road within the Talbot Hall Residential Planned Development.
- This request would designate the site as a Norfolk Historic Landmark requiring all future modifications to be reviewed and approved by the Architectural Review Board.

B. Plan Analysis

- The preserving our heritage chapter of *plaNorfolk2030* includes a goal calling for the protection of Norfolk's historic resources and an outcome calling for an increased number or resources to be protected.
    a. It further includes an action calling for the city to work with neighborhoods to gain support for new locally-designated historic districts and landmarks.

C. Zoning Analysis

i. General

- In 2014 an approximately 7-acre site, including the Talbot Hall Manor House, located at the intersection of Talbot Hall Road and Caroline Street adjacent to the Lafayette River was rezoned to a Residential Planned Development.
- The entire property had been zoned IN-1 (Institutional), was previously owned by the Episcopal Diocese of Southern Virginia, and was used as a retreat location for the Diocese.
- The Talbot Hall Residential Planned Development district required that the Manor House be preserved on its own lo with a minimum of two hundred linear feet along a right-of-way.
    - The property covered by the Planned Development has been subdivided and the Manor House lot complies with this requirement.
- Also in 2014, the Historic and Cultural Conservation and Historic Landmarks Chapter of the *Zoning Ordinance* was amended to allow for the creation of a Norfolk Historic Landmark designation.
- The amendment set out to address the numerous structures in Norfolk that are not located in a local, state or federal historic district, but are of historic or cultural significance and require protection against destruction and encroachment.
- Designation as a Norfolk Historic Landmark requires the following:
    - Submission of an application to the Architectural Review Board (ARB) to request that a structure or structures be designated as a Norfolk Historic Landmark.
    - Upon review of a staff report and the application, ARB provides a recommendation to the Planning Commission regarding the designation of the structure(s) as a Norfolk Historic Landmark.
    - A public hearing is held by both the Planning Commission and City Council.
    - Approval of the designation by City Council deems the structure(s) a Norfolk Historic Landmark.

- The result is that structure is deemed historic and any modifications, additions or changes to the exterior will be required to be reviewed and approved by the Architectural Review Board.

ii. Parking
N/A

iii. Flood Zone
The property is in the X (Low to Moderate) and X (Shaded) flood zones which are low risk flood zones.

iv. Historic Analysis

- Upon consideration, the ARB is recommending to the Planning Commission the designation of the Talbot Hall Manor House as a Norfolk Historic Landmark.
- In February of 2016 the Virginia Department of Historic Resources (VDHR) entered the Talbot Hall Manor House into the National Register of Historic Places.
- On March 2, 2016 VDHR approved a historic easement on the property subject to the following conditions
  - Conveyance of a conservation easement over the 0.42 acre Talbot Hall property that prohibits division or subdivision.
  - Provisions in the easement for protection of the entire exterior of the main historic dwelling and its character-defining interior architectural features and spaces.
  - Provisions in the easement of repair, rehabilitation, and modifications to the Talbot Hall dwelling.
  - Provision in the easement for construction of a detached garage.

D. Transportation Impacts
N/A

E. Environmental Impacts
No changes will be made to the site.

F. Surrounding Area/Site Impacts
Designation of the Manor House as a Norfolk Historic Landmark will allow for the preservation of this historic structure built in the late 1700s.

G. Payment of Taxes
The property is currently non-taxable.

H. Civic League
Notice was sent to the Talbot Park Civic League on April 13.

I. Communication Outreach/Notification

- Legal notice was posted on the property on April 19.

- Letters were mailed to all property owners within 300 feet of the property on May 13.
- Legal notification was placed in *The Virginian-Pilot* on May 12 and May 19.

J. Recommendations

Staff

Staff recommends that the Talbot Hall Manor House be designated as a Norfolk Historic Landmark.

ARB

Based on the criteria set forth below (as contained in the *Zoning Ordinance),* ARB recommends that the Talbot Hall Manor House be designated as a Norfolk Historic Landmark:

(1) The area exemplifies the architectural cultural, economic, social, political, artistic, or religious history of the city.

(2) The area exemplifies the architectural character of a particular era in the history of the city.

(3) The area is the site of an historic event which had a significant impact on the history of the city.

(4) The area contains open space, street configurations, topographical features, bodies of water, or landscaped grounds of significance with regard to urban planning or landscape architecture.

(5) Design Elements:

1. Architectural Style
2. Form—plan configuration, roofline
3. Massing—number of stories, ells, wings
4. Façade Organization—symmetrical, asymmetrical, number of bays
5. Fenestration—types of doors and windows and their organization
6. Materials—visible materials including foundations, walls, roofs
7. Character Defining Details—cornices, woodwork, iron work, elements specific to a certain style
8. Other elements—porches, chimneys, unique features
9. Additions
10. Site Context
11. Outbuildings, secondary resources

Attachments

Location Map
Zoning Map
Application
Notice to the Talbot Park Civic League
Staff recommendation to Architectural Review Board
Letters from the Virginia Department of Historic Resources

Proponents and Opponents

Proponents
None

Opponents
None

05/27/2016 lds

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT.

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE TO DESIGNATE THE PROPERTY LOCATED AT 6651 TALBOT HALL COURT AS A NORFOLK HISTORIC LANDMARK AND TO AMEND THE ZONING MAP TO SHOW THE DESIGNATION.

- - -

WHEREAS, the Talbot Hall manor house and property located at 6651 Talbot Hall Court in the City of Norfolk is of such age and significance historically, architecturally and culturally that it is eligible to be designate as a Norfolk Historic Landmark;

WHEREAS, the owner of the property has applied to seek the designation as a Norfolk Historic Landmark and said application has been reviewed and recommended for approval by both the Norfolk Architectural Review Board and the Norfolk City Planning Commission; and

WHEREAS, on February 2, 2016, the United States Department of the Interior, National Park Service did enter the property onto the National Register of Historic Places; now, therefore,

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

Section 1:- That the property located at 6651 Talbot Hall Court is hereby designated as a Norfolk Historic Landmark and shall be both subject to the

regulations and entitled to the benefits set forth in the applicable provisions of Chapter 9 of the Zoning Ordinance of the City of Norfolk, 1992 (as amended), entitled "Historic and Cultural Conservation Districts (HC) and Historic Landmarks." The property which is the subject of this designation is more fully described as follows:

> Property fronts 207 feet, more or less, along the southern line of Talbot Hall Crescent, 51 feet, more or less, along the western terminus of Talbot Hall Road, and 176 feet, more or less, along the northwest line of Talbot Hall Court; premises numbered 6651 Talbot Hall Court.

Section 2:- That the City Council hereby determines that the designation accomplished herein is based on consideration of all of the following criteria § 9-2.3(b) of the Zoning Ordinance of the City of Norfolk, 1992 (as amended), namely:

> (1) The historic, architectural, or cultural significance, if any, of the building, structure, or site considered on its own merits and which distinguish it from other similar or common buildings, structures or sites in the same vicinity;
>
> (2) Whether the building, structure, or site is located in an area that is not appropriate or eligible for designation as a local historic district when considered in its entirety;
>
> (3) The association of the building, structure or site with an historic person or event of national, state, or regional significance or with a renowned architect or master craftsman;
>
> (4) The age and condition of the building or structure and whether significant portions are at least fifty (50) years old;
>
> (5) The degree to which the original or distinguishing character, qualities, or materials of a building or structure on the property have been retained and have not undergone changes such that the historical integrity of the property is no

longer significantly evident; and

(6) Whether the property has been listed on the U.S. Department of the Interior's National Register of Historic Places or the Virginia Landmarks Register.

Section 3:- That, as a reference for consideration of any application for a certificate of appropriateness, the following distinguishing characteristics and historic significance that are specifically relevant to this historic building include all of the following:

(a) Architectural Style;
(b) Form—plan configuration, roofline;
(c) Massing—number of stories, ells, wings;
(d) Façade Organization—symmetrical, asymmetrical, number of bays;
(e) Fenestration—types of doors and windows and their organization;
(f) Materials—visible materials including foundations, walls, roofs;
(g) Character Defining Details—cornices, woodwork, iron work, elements specific to a certain style;
(h) Other elements—porches, chimneys, unique features;
(i) Additions;
(j) Site Context; and
(k) Outbuildings, secondary resources.

Section 4:- That the official Zoning Map for the City of Norfolk is hereby amended and reordained so as to reflect this rezoning.

Section 5:- The Council hereby finds that this zoning amendment is required by public necessity, convenience, general welfare, or good zoning practice.

Section 6:- That this ordinance shall be in effect from the date of its adoption.

Location Map
TALBOT HALL CRESCENT
COMMONWEALTH PRESERVATION GROUP
MISCELLANEOUS STREET
TALBOT HALL COURT
0 15 30 60 Feet
N

Future Land Use Map
CAROLINE STREET
CARLISLE WAY
TALBOT HALL CRESCENT
TALBOT HALL ROAD
MISCELLANEOUS STREET
TALBOT HALL COURT
COMMONWEALTH PRESERVATION GROUP
Commercial
Downtown
Industrial
Institutional
Military
Multifamily
Multifamily Corridor
Office
Open Space/Recreation
Residential Mixed
Single Family Suburban
Single Family Traditional
Single Family Urban
Utility/Transportation
Transit Supportive Area
0 30 60 120 Feet
N

Zoning Map
R-5
R-6
R-6
R-6
CAROLINE STREET
CARLISLE WAY
TALBOT HALL CRESCENT
TALBOT HALL ROAD
MISCELLANEOUS STREET
TALBOT HALL COURT
COMMONWEALTH PRESERVATION GROUP
PD-R Talbot Hall
0 30 60 120 Feet
N

THE CITY OF NORFOLK
CITY PLANNING

To: Norfolk Architectural Review Board
City of Norfolk, Virginia

April 25, 2016

From: Susan M. McBride, Principal Planner

Subject: Norfolk Landmark designation

Ward/Superward: 1/6

Approved:

Leonard M. Newcomb, III
Assistant Director, Planning

Staff Report

I. **Property Address**: 6651 Talbot Hall Court

II. **Applicant Information:** #16-21
Applicant: Paige Pollard, Commonwealth Preservation Group
Owner: Th-HI, LLC

III. **District Information:**
Total Resources: One (1) contributing resource
Period of Significance: 1802-1954
Area(s) of Significance: Architecture
Civic League: Talbot Park
Date of Structure: 1799-1802
Type of Nomination: Local Landmark
Zoning: PDR-Talbot Hall
Boundaries: See attached "Subdivision Map"

IV. **Building Application:** Recommendation to the City Planning Commission for a local Norfolk Landmark designation.

V. **Project Description:** Talbot Hall was constructed in 1799-1802 by Samuel Butt Talbot for his son Thomas. This was built as a "summer escape" from the City of Norfolk and has been called a "perfect Georgian style". The home was built along the Lafayette River and the plantation reached approximately two-thousand acres. Talbot Hall is a five-bay Georgian style house built on a rectangular basement and sited on a north-south and east-west axis. The dwelling is a two-and-a-half story, with a central hall that has two rooms per floor. The original configuration remains today, in nearly original condition, with two additions. The bricks for the exterior were made from the clay on the property with the mortar mixed from the oysters and sand out of the river. The roof was originally slate, hipped, and had two

pedimented dormers on the front and back of the roof. Dentil molding is under the eaves. The front and back of elevations had full width single story, open pent porch. The porches are supported by brick piers with fluted, tapered, Doric columns and matching pilasters at each end. The porches have remained mostly open with some wood painted lattice installed behind the piers in the recent past. A two-story ell addition was in 1830. This changed the roofline to a cross hip and eliminated one dormer on the east side of the roof but added a dormer to the south side of the ell roof. This addition also took about a third of the porch on the east elevation. The home has four brick chimneys: two interior chimneys on either end of the original home; an interior chimney on the ell addition; and an exterior chimney on the kitchen addition. The stucco was believed to have been applied to the exterior in the mid-nineteenth century when the original brick began to deteriorate. The stucco also served to unify the old and new portions of the home.

The main entrance door on the west elevation is original and has the original door hardware. It is a four panel, four lite double-leaf door. This door has a five-lite transom above the door. The rear entrance door is also original and the other two doors are modern wood doors to the kitchen addition.

The original wood windows exist on the first floor of the original home and are 9/9 double hung sash; the 1830's addition has original 2/2 double hung sash; and the upper floors are predominately vinyl replacement windows. There is an original narrow six-pane historic wood window on the second floor west elevation.

VI. District Significance:

This is a significant structure for its architecture as described above and the cultural significance to the City of Norfolk as quoted from the National Register Nomination report as prepared by the applicant:

"The land surrounding Talbot Hall, over eight hundred acres, was purchased in 1774 by Thomas Talbot and was originally part of the Langley estate which was granted by the King in 1675. The estate would eventually reach approximately two thousand acres. Talbot Hall was begun by Salmon Butt Talbot in 1799 as a summer country residence for his son, Thomas Talbot. He died that same year but left money in his will to complete the house which Thomas Talbot did ca 1802. The exact date of completion is not known, however the plaster relief of the United States seal puts a likely completion date at the end of 1802. The seal has seventeen stars, one for each state, and Ohio was admitted to the Union as the seventeenth state on November 29, 1802. Three different versions of the same story claim that the presence of the U.S. seal kept Union soldiers from ransacking or burning the home during the Civil War. The progression of the property ownership after completion of the house was from Thomas Talbot to William Henry Talbot in 1838, to another Thomas Talbot in 1884, and to Minton Talbot in 1932.

The house has been called a "perfect Georgian-Style" house with a rectangle base containing two rooms on each level and five box-seated windows across the front. The house was built on a north-south and east-west axis and a compass was later painted on the porch ceiling showing the river due west. It was constructed of bricks made on site using clay from the yard as well as sand and shells from the river. At some point around the mid-nineteenth century the bricks began to deteriorate and a thick stucco was applied to the exterior. The interior plaster was also made on site and a later repair revealed it to be about two inches thick and matted with pigs' hair. Other typical Georgian features of the house are pedimented dormers, the hipped roof with interior end chimneys, the shallow dentiled cornice, the single nine-over-nine double hung wood sash, and the wood paneled door with multi-light transom. The first floor ceilings are eleven feet high and the walls a foot thick and the two main rooms on each level of the original house are divided by a large central hall. While uncommon with Georgian houses, the full width one-story porches, with fluted Doric columns, seems a natural result of the site overlooking a large river. The ca 1830 rear el addition resulted in the creation of a cross hip roof, the removal of a rear dormer, and the truncation of the rear porch, which also ran the width of the house, matching the front porch.

Minton Talbot died on March 28, 1950 at Talbot Hall where he was born in 1868. He earned a law degree from the University of Virginia and practiced the law in Norfolk until the last year of his life. It was Minton Talbot who oversaw the more recent changes to the property including the addition of plumbing, radiator heating, electricity, and a peeping device on the back door. He was married to Miss Cornelia Brackenridge in 1921 and moved from his house at 325 West Freemason Street back to Talbot Hall at that time. He and Mrs. Brackenridge met on a South American cruise. She was an artist and had the Virginia seal cast and installed over the dining room mantel. During his lifetime paint was never used on the walls of the house, only white wash, and the floors were rubbed with a mixture of gasoline and paraffin. The development of several nearby neighborhoods stemmed from the sale of most of his plantation during his lifetime as a result of tax debts and failed investments during the Great Depression. His daughter Carol described a typical scenario during the development of Talbot Park where a lot would be sold for $1,000 which would be split $100 for the broker, $600 for back taxes, and $300 to her father. Minton Talbot was an enthusiastic horticulturalist and many of the old trees in the neighborhoods derived from the Talbot estate were donated and/or planted by him. Mrs. William F. (Caroline) Talbot Egelhoff inherited Talbot Hall and was the last owner before passing it to the Episcopal Diocese of Southern Virginia in 1954.

The Talbot family had a long and close relationship with the Lindsay family. Harvey L. Lindsay, Sr. was instrumental in helping the Talbot family work through financial difficulties

while keeping their cherished Talbot Hall home. Mr. Lindsay acquired much of the land formerly associated with Talbot Hall, then designed and developed the neighborhoods of Talbot Park and Belvedere to be model suburban communities. The Belvedere Corporation, run by Harvey L. Lindsay, Sr., was chartered on January 14, 1937. The neighborhood plat was recorded in February 1937. Thurmer Hoggard, Jr., a little known Norfolk architect, designed a handful of house types for the Belvedere neighborhood. The Belvedere homes were constructed by Meyer & Whitehall, and were typically built for approximately $5,000. In addition to fully appointed houses, the neighborhood received lush landscaping with narrow curving drives; it was devoid of sidewalks. The neighborhood of Talbot Park developed incrementally, thus exhibiting a wide array of housing types and styles spanning a longer period of construction than Belvedere. Building permits from 1936 and 1937 show a large span in home prices in the Talbot Park neighborhood, with smaller homes selling for around $3,000 and waterfront property priced at up to $10,000. The Talbot Park neighborhood was developed with an eye to green space for families; lots were spacious, and a park was proposed to provide an area for the local children to play out of the streets. The neighborhood proved a desirable one, quickly increasing in size. By 1942, there had been nearly 1,500 buildings constructed in Talbot Park, Belvedere, and surrounding areas, with 1,000 more on the horizon. Although Talbot Park was primarily a residential development, the neighborhood became home to numerous churches as well as Granby High and Elementary Schools and Depaul Hospital.

There are only two other comparable homes in the City of Norfolk. Poplar Hall (ca 1760, VDHR # 122-0045, NR) is a five-bay, two-story Flemish bond brick Georgian dwelling with interior end chimneys, much like Talbot Hall, though without a stucco covering. Also like Talbot Hall, it sits on a one acre site which was once part of a much larger estate. The entry portico has replacement columns, there are an 1860, 1955, and 1980s additions on one side, and it retains a largely intact core central hall interior plan and finishes. The Talbot-Cocke House (ca 1780, VDHR # 122-0111) is another house of the Talbot family which was part of another plantation of approximately 1000 acres across what was Tanner's Creek from Talbot Hall. This house has many similarities to Talbot Hall: two-story, five-bay brick masonry covered in stucco, hipped roof. The exterior has had two major alterations since its construction as compared to a ca 1900 photograph: a large, pedimented dormer with lunette window was installed above the central three bays and a three-bay wide single-story porch has been removed and replaced with a single-bay, one-story Colonial Revival style portico. There are also three twentieth century additions to the house off of the two sides and rear."

VII. Recommendation: This application meets the requirements for *Designation of Historic Districts, Structures or Landmarks* as outlined in chapter 9 of the *City of Norfolk Zoning Ordinance.* Staff recommends that the exterior alterations be reviewed by the Architectural Review Board using the *City of Norfolk Historic District Design Guidelines* and the following *Elements of Design for Talbot Hall:*

1. *Height*: The house is two and-a-half stories high (2 1/2) and there is a maximum building height of thirty-five feet.
2. *Proportion of building's front façade*: The front façade faces the Lafayette River; is five bays wide with a central entrance.
3. *Proportion of openings within the façade:* The window and door placement is deliberate and the sizes are at a scale that is in keeping with the massing of the house. The original elevations have windows that line up vertically and horizontally.
4. *Rhythm of solids to voids in the front façade:* The rhythm is regular and symmetrical. The wooden shutters have been removed from the home but added interest within the solid area of the elevations.
5. *Rhythm of spacing of buildings on streets*: Inapplicable due to a single building district
6. Rhythm of entrance and/or porch projections—Inapplicable due to a single building district.
7. *Relationship of materials*: the majority of the home has a hard stucco covering the original masonry; painted wood windows and trim; composite/asphalt three-tab roofing shingle replaced the original slate roof; brick foundation.
8. *Relationship of textures:* The painted wood surfaces and windows are smooth. The stucco is even with a pebble feel. The three-tab roof is flat. The dentil molding has the most depth.
9. *Relationship of color:* the home is a white on white color pattern
10. *Relationship of architectural details:* Original wood paneled doors with transoms; double hung wood sash windows with panes; working shutters (not installed as of designation); decorative cornice with dentils; Doric porch columns and pilasters; pedimented dormers; and hipped roof are identifying features of the Georgian style.
11. *Relationship of roof shape:* The roof is cross-hipped on the main part of the home; a flat roof connects the home to the kitchen addition that has an end gabled roof.
12. *Walls of continuity:* The hedgerow at the rear of the property creates a wall of continuity on the property.
13. *Relationship of significant landscape features and surface treatments:* The landscape is park-like with mature trees and shrubs. There is no hardscaping in the front of the house as the porch steps down to the lawn. There is a paved through driveway with a walkway to the back door and the door to the kitchen. A set of concrete steps go down to an oversized basement door in the 1830 addition. This door is adjacent to the back door.
14. *Relationship of open space to structure:* As of designation, this home has open space all around it with a clear view of the Lafayette River in three directions. The lots have been subdivide and sold for single family residential. There is a view shed easement from the front (west) elevation to the river. No plantings are to be installed higher than four feet

(the height of the porch) as to keep a clear view to the river. This property is required to have two-hundred feet of frontage along the public street.

15. *Scale of façade and façade element:* The front façade is horizontal with vertical window bands. The height of the foundation has the home sitting high.
16. *Directional expression of front elevations*: Talbot Hall was built on a north-south and east-west axis that faces the Lafayette River. As the original acreage developed and the subdivisions were established you come up to this property from the back. This home is visible from all angles as is sits on a lot where Talbot Hall Court meanders around on three sides.
17. *Rhythm of building setback:* Not applicable as this is a single building district
18. *Relationship of lot coverage:* The lot was designed around the house as the subdivision occurred in 2015. The lot has room at the rear for a two car garage.
19. *Degree of complexity within the façade:* is very simple and orderly with the only ornamentation at the eaves in the form of dentil molding. This is a classic example of an early Georgian style.
20. *Orientation, vistas and overviews*: The house is oriented to the west to face the Lafayette River but no longer has the property to the river attached to this lot. Due to the significant relationship of the home to the vistas and overviews, property easements have been established with the lots #4 and #3 to maintain this connection.
21. *Symmetric or asymmetric appearance*: The house is symmetric from the front and asymmetric from the rear.
22. General environmental character: The original two-thousand acres have been sold off over time with the last approximately nine acres subdivided in 2015 into fourteen single-family residential lots. The property had a barn at one time and horizontal board fencing around part of the property. The trees are mature with large canopies.

APPLICATION
DESIGNATION OF HISTORIC DISTRICTS, STRUCTURES OR LANDMARKS

Date of application: March 4, 2016

DESCRIPTION OF PROPERTY

Property location: (Street Number) 6651 (Street Name) Talbot Hall Court

Existing Use of Property: Vacant/Residential

Current Building Square Footage 4,135 (per Norfolk Air)

Proposed Use Single family residential

Proposed Building Square Footage Same as existing

Trade Name of Business (If applicable) N/A

APPLICANT

(If applicant is a LLC or a Corp./Inc., include name of official representative and/or all partners)

1. Name of applicant: (Last) Dasheill (First) William (MI) E

Mailing address of applicant (Street/P.O. Box): 1225 W 26th Street

(City) Norfolk (State) VA (Zip Code) 23508

Daytime telephone number of applicant (757) 623-5012 Fax (757) 627-5458

E-mail address of applicant: billy@rggroup.net

AUTHORIZED AGENT (if applicable)
(If agent is a LLC or a Corp./Inc., include name of official representative and/or all partners)

2. Name of applicant: (Last) Dasheill (First) William (MI) E.

Mailing address of applicant (Street/P.O. Box): 1225 W 26th Street

(City) Norfolk (State) VA (Zip Code) 23508

Daytime telephone number of applicant (757) 623-5012 Fax (757) 627-5458

E-mail address of applicant: billy@rggroup.net

PROPERTY OWNER
(If property owner is a LLC or a Corp./Inc., include name of official representative and/or all partners)

3. Name of property owner: (Last) Dasheill (First) William (MI) E.

Mailing address of property owner (Street/P.O. box): 1225 W. 26th Street

(City) Norfolk (State) VA (Zip Code) 23508

Daytime telephone number of owner (757) 623-5012 email: billy@rggroup.net

CIVIC LEAGUE INFORMATION

Civic League contact: Joe Sensi, Vice President

Date(s) contacted: March 15, 2016

Ward/Super Ward information: Ward 1/Superward 6

CERTIFICATION:
I hereby submit this complete application and certify the information contained herein is true and accurate to the best of my knowledge:

Print name: William E Dashiell **Sign:** [signature] 3/23/16
(Property Owner or Authorized Agent of Signature) (Date)

Print name: William E Dashiell **Sign:** [signature] 3/23/16
(Applicant) (Date)

ONLY NEEDED IF APPLICABLE:

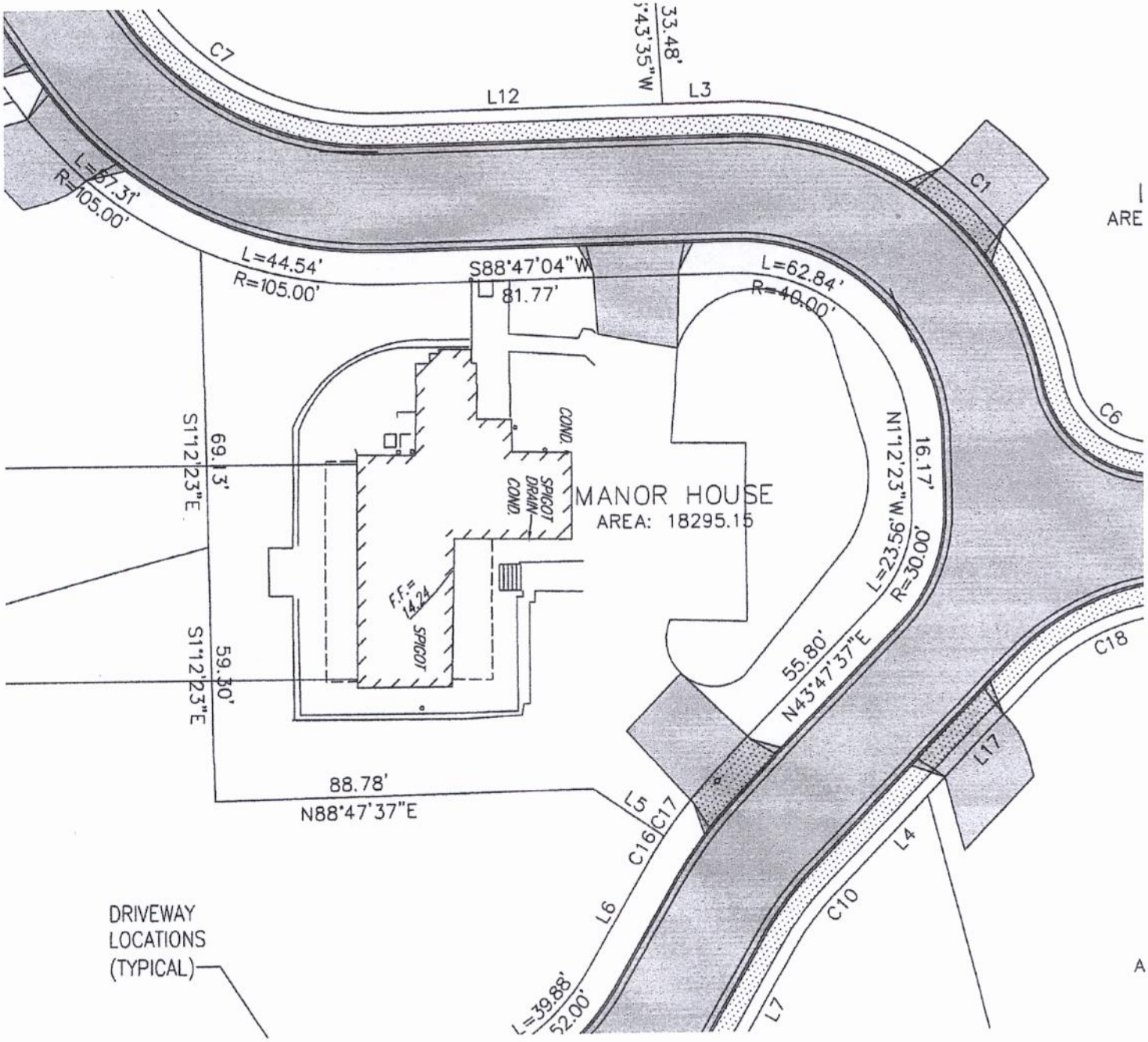
Print name:_____ **Sign:**_____/_____/_____
(Authorized Agent Signature) (Date)

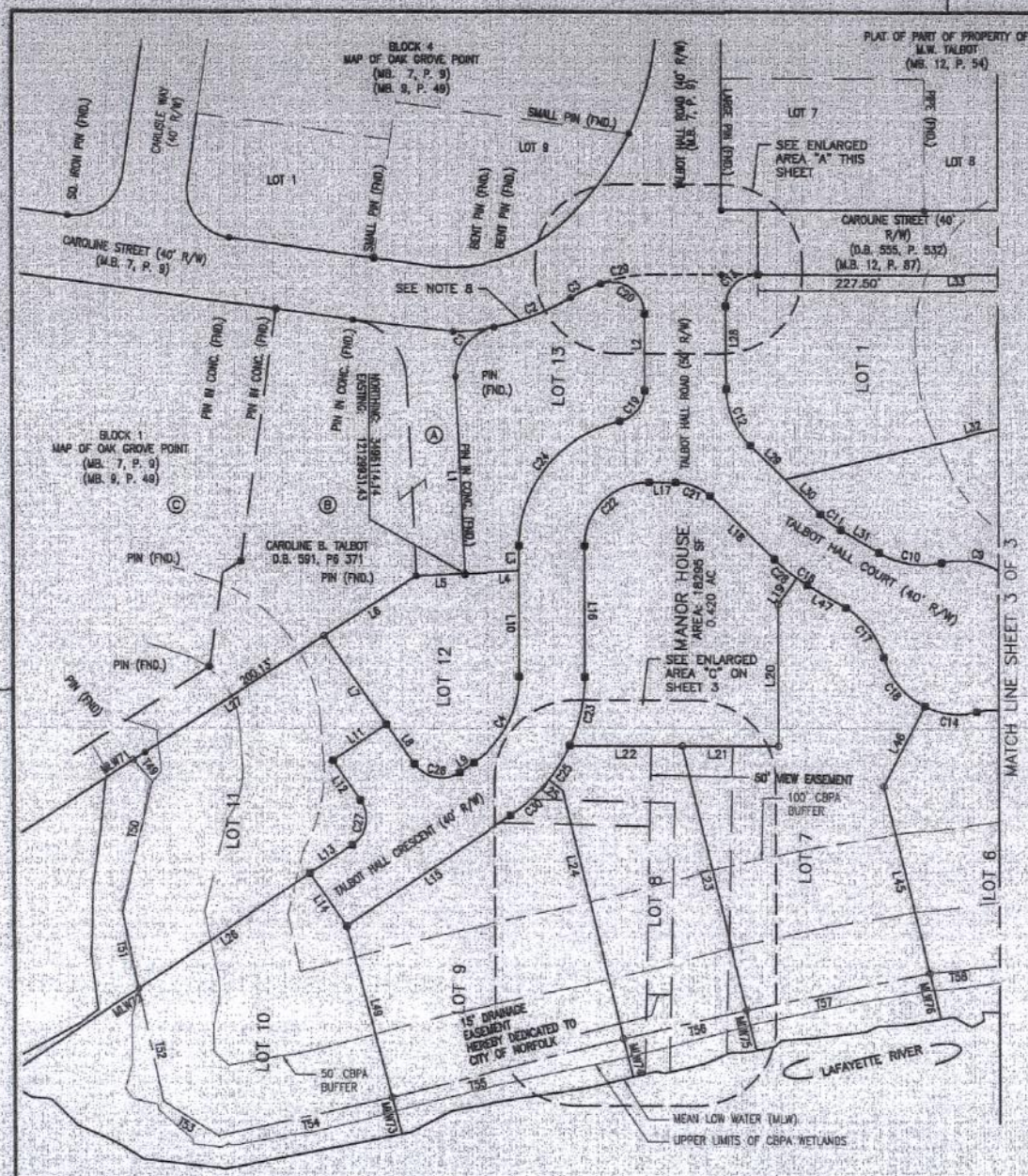
Talbot Hall—west elevation facing the Lafayette River

Norfolk Historic Landmark Application – March 24, 2016

Talbot Hall, 6651 Talbot Hall Court, Norfolk, VA

Project Representative: Paige Pollard
Commonwealth Preservation Group
PO Box 11083
Norfolk, VA 23517
(757) 923-1900
paige@commonwealthpreservationgroup.com


C7
L12
33.48'
;'43'35"W
L3
C1
L=87.31'
R=105.00'
L=44.54'
R=105.00'
S88°47'04"W
81.77'
L=62.84'
R=40.00'
C6
S1°12'23"E
69.13'
COND.
SPIGOT
DRAIN
COND.
MANOR HOUSE
AREA: 18295.15
N1°12'23"W
16.17'
L=23.95'
R=30.00'
F.F.=
14.24
SPIGOT
S1°12'23"E
59.30'
55.80'
N43°47'37"E
C18
L17
88.78'
N88°47'37"E
L5
C17
C16
L4
L9
C10
DRIVEWAY
LOCATIONS
(TYPICAL)
L=39.88'
52.00'
L7
ARE
A



LINE TABLE – TIE LINES		
LINE #	BEARING	LENGTH
T49	S47°50'17"W	17.81'
T50	S76°32'11"E	83.46'
T51	N77°15'35"E	48.00'
T52	S77°15'35"W	72.42'
T53	N31°35'09"E	40.57'
T54	N14°05'25"W	109.81'
T55	N15°42'01"W	147.00'
T56	N14°35'47"W	77.87'
T57	N13°05'10"W	115.04'
T58	N7°04'44"W	100.87'

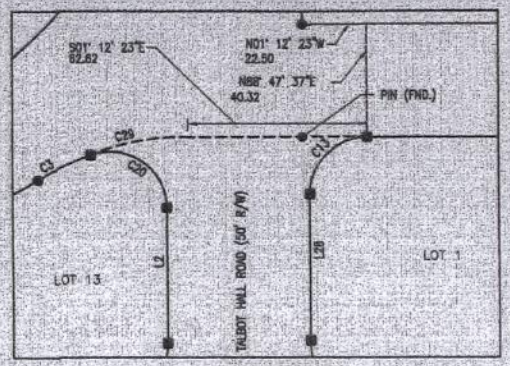
LINE TABLE – TIE LINES TO MLW		
LINE #	BEARING	LENGTH
MLW71	S34°42'15"E	20.57
MLW72	N35°38'18"W	101.17
MLW73	S74°21'06"W	24.08
MLW74	N75°23'16"E	24.75
MLW75	N75°23'16"E	26.07
MLW76	N75°23'16"E	26.74

Ⓐ 30' R/W CLOSED BY COUNCIL ORDINANCE #17, 173 (7/1/54)

Ⓑ LOT 1
BLOCK 1 MAP OF OAK GROVE POINT
(M.B. 7, P. 9) (M.B. 9, P. 49)

Ⓒ LOT 2

VIRGINIA STATE PLANE COORDINATE SYSTEM
SOUTH ZONE (NAD 1983/93)



ENLARGED AREA "A"
SCALE: 1" = 30'

PROPERTY EXTENDS INTO THE LAFAYETTE RIVER AS FAR AS THE LAW ALLOWS

CURVE TABLE						
CURVE #	RADIUS	LENGTH	DELTA	TANGENT	CHORD BEARING	CHORD LENGTH
C1	30.00'	42.69'	81°31'52"	25.88	S52°57'39"E	38.18'
C2	140.00'	50.64'	20°43'31"	25.60	S22°33'28"E	50.37'
C3	100.00'	20.41'	11°41'41"	10.24	S27°04'23"E	20.38'
C4	65.00'	63.05'	55°34'39"	34.25	N63°25'37"W	60.61'
C9	48.00'	42.63'	51°14'41"	23.02	N11°23'24"E	41.51'
C10	52.00'	39.88'	43°56'44"	20.98	N7°44'28"E	38.91'
C11	65.00'	15.97'	14°04'49"	8.03	N36°45'12"E	15.93'
C12	50.00'	39.27'	45°00'00"	20.71	N66°17'37"E	38.27'
C13	20.00'	31.42'	90°00'00"	20.00	S46°12'23"E	28.28'
C14	48.00'	33.19'	39°37'12"	17.29	S5°34'40"W	32.53'
C15	52.00'	39.88'	43°56'44"	20.98	S7°44'28"W	38.91'
C16	105.00'	7.73'	4°13'08"	3.87	S31°49'22"W	7.73'
C17	52.00'	39.88'	43°56'44"	20.98	S51°41'09"W	38.91'
C18	48.00'	40.44'	48°16'16"	21.51	S49°31'23"W	39.25'
C19	20.00'	26.87'	76°59'00"	15.90	N52°42'53"W	24.90'
C20	20.00'	38.40'	110°01'09"	26.57	S33°47'02"W	32.77'
C21	30.00'	23.56'	45°00'00"	12.43	S21°17'37"W	22.96'
C22	40.00'	62.84'	90°00'33"	40.01	S46°12'40"E	56.57'
C23	105.00'	44.54'	24°18'18"	22.61	S79°03'47"E	44.21'
C24	80.00'	107.50'	76°59'33"	63.63	N52°43'10"W	99.59'
C26	20.00'	31.42'	90°00'00"	20.00	N9°21'42"E	28.28'
C27	20.00'	31.42'	90°00'00"	20.00	N80°38'18"W	28.28'
C28	105.00'	18.07'	9°51'41"	9.06	S38°51'46"W	18.05'
C29	100.00'	34.19'	19°35'25"	17.26	N11°12'56"W	34.03'
C30	105.00'	32.25'	17°35'52"	16.25	S44°26'14"E	32.12'

LINE TABLE		
LINE #	BEARING	LENGTH
L1	N89°18'25"E	123.36'
L2	S88°47'37"W	47.74'
L3	S88°47'04"W	15.79'
L4	N3°43'35"W	33.48'
L5	N3°43'35"W	30.00'
L6	S34°42'15"E	67.78'
L7	N54°21'42"E	67.34'
L8	N54°21'42"E	30.00'
L9	N35°38'18"W	10.73'
L10	S88°47'04"W	65.98'
L11	N35°38'18"W	40.00'
L12	S54°21'42"W	30.00'
L13	N35°38'18"W	31.72'
L14	S54°21'42"W	40.00'
L15	N35°38'18"W	122.46'
L16	N88°47'04"E	81.77'
L17	S1°12'23"E	16.17'
L18	S43°47'37"W	55.80'
L19	S56°04'04"E	20.00'
L20	N88°47'37"E	88.78'

LINE TABLE		
LINE #	BEARING	LENGTH
L21	S1°12'23"E	59.30'
L22	N1°12'23"W	69.13'
L23	N75°23'16"E	170.07'
L24	N75°23'16"E	159.73'
L25	N36°45'40"E	10.91'
L26	N35°38'18"W	127.66'
L27	S34°42'15"E	141.22'
L28	N88°47'37"E	51.60'
L29	N43°47'37"E	29.77'
L30	N43°47'37"E	31.06'
L31	N28°42'47"E	27.58'
L32	S14°36'44"E	227.42'
L33	S1°12'23"E	299.08'
L45	N75°23'16"E	120.16'
L46	S84°36'44"E	56.13'
L47	S28°42'47"W	27.58'
L49	S74°21'06"W	111.15'

COMMONWEALTH OF VIRGINIA
RICHARD W. CLARK
Lic. No. 1491-B
6-3-15
LAND SURVEYOR

VIRGINIA:

IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF NORFOLK, VIRGINIA, ON THE _____ DAY OF _____ 2015 THIS PLAT WAS THIS DAY RECEIVED AND UPON CERTIFICATE OF ACKNOWLEDGMENT, THERETO ANNEXED, ADMITTED TO RECORD.

MAP BOOK: _____ TESTE: GEORGE E. SCHAEFER, CLERK

PAGE: _____ BY: _____

GRAPHIC SCALE

SCALE: 1" = 50'

50 0 50 100 200

PLAT OF SUBDIVISION OF PART OF PROPERTY OF THE THOMAS TALBOT EST.

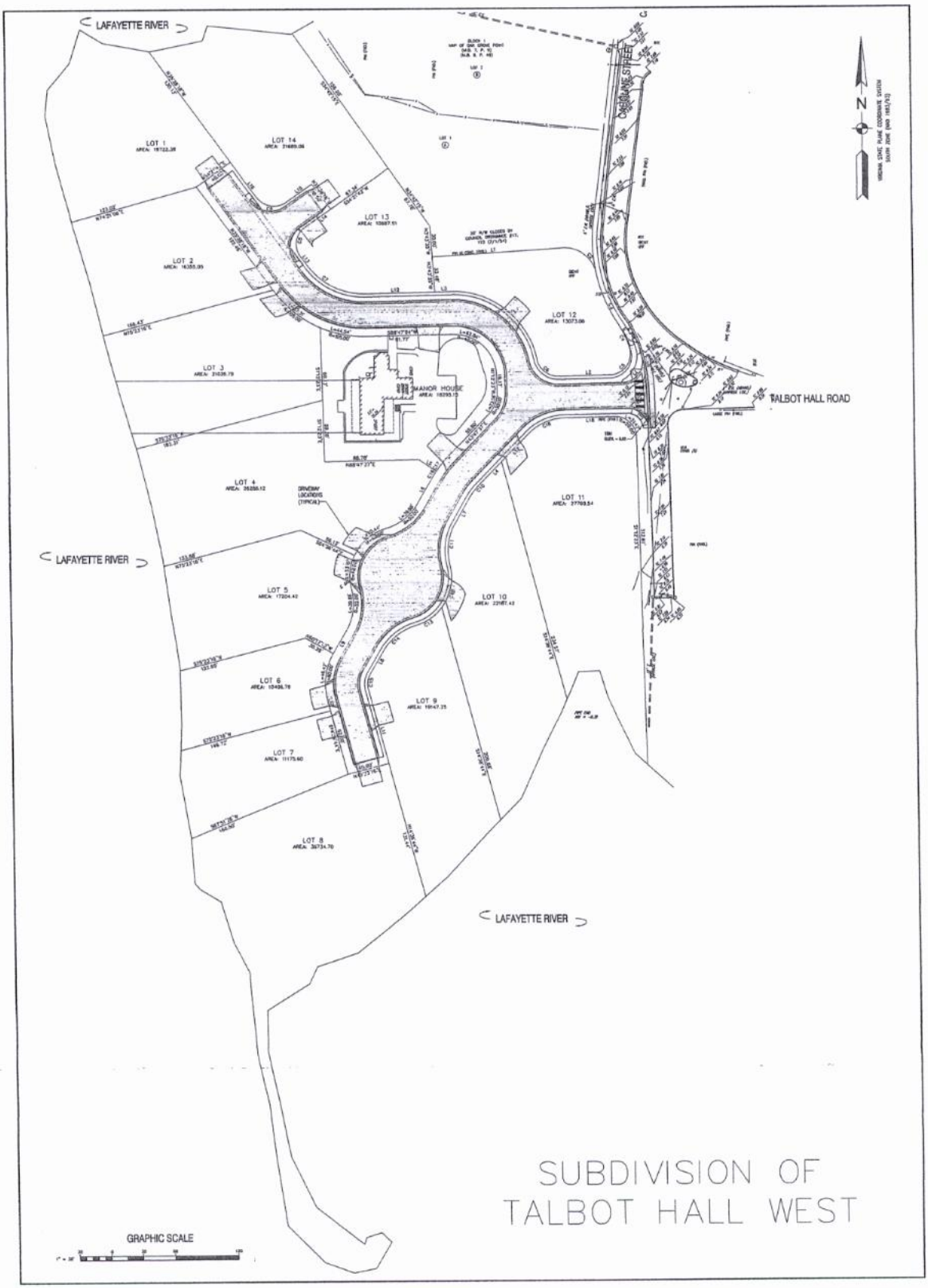
(M.B. 6 P. 56)

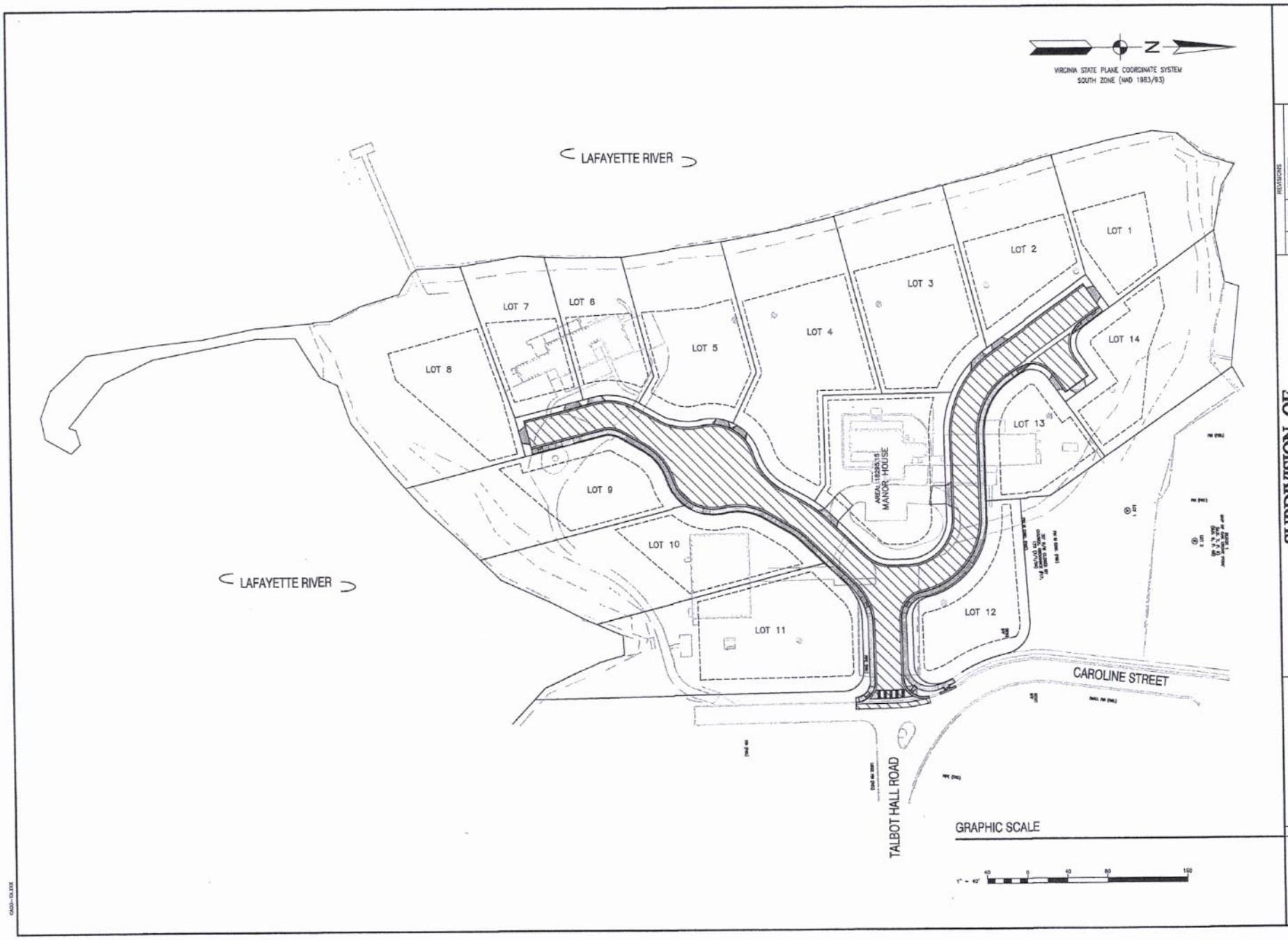
KNOWN AS TALBOT HALL

NORFOLK, VIRGINIA

SCALE: 1" = 50' JUNE 3, 2015

C. ALLAN BAMFORTH, JR.
ENGINEER – SURVEYOR, LTD.
P.O. BOX 6377
NORFOLK, VIRGINIA 23508
(757)627-7079


LAFAYETTE RIVER
LAFAYETTE RIVER
LAFAYETTE RIVER
TALBOT HALL ROAD
MANOR HOUSE
LOT 1
LOT 2
LOT 3
LOT 4
LOT 5
LOT 6
LOT 7
LOT 8
LOT 9
LOT 10
LOT 11
LOT 12
LOT 13
LOT 14
GRAPHIC SCALE
SUBDIVISION OF
TALBOT HALL WEST



REVISIONS

KEY	DATE	DESCRIPTION

SUBDIVISION OF TALBOT HALL WEST

NORFOLK VIRGINIA

RE-ZONING PLAN

C. ALLAN BAMFORTH, JR.
ENGINEER – SURVEYOR, LTD.
2207 HAMPTON BLVD.
NORFOLK, VA 23517
(757) 627-7078

DESIGN	DRAWN	CHECKED	PROJ.MGR.
-	-	-	-

DATE : 03-07-2014 SCALE : GRAPHIC

CAB PROJ. NO.: 13.040

SHEET

C-1

1 OF 1

Talbot Hall, 6651 Talbot Hall Court, Norfolk, VA 23505

East elevation

South elevation

Talbot Hall, 6651 Talbot Hall Court, Norfolk, VA 23505

West elevation

Northwest oblique

Northeast oblique

COMMONWEALTH of VIRGINIA

Department of Historic Resources

2801 Kensington Avenue, Richmond, Virginia 23221

Molly Joseph Ward
Secretary of Natural Resources

Julie V. Langan
Director

Tel: (804) 367-2323
Fax: (804) 367-2391
www.dhr.virginia.gov

February 23, 2016

Susan McBride
Certified Local Government Coordinator
City of Norfolk
810 Union Street, Suite 508
Norfolk, VA 23503

Re: Talbot Hall, City of Norfolk

Dear Ms. McBride:

Congratulations! I am pleased to inform you officially that **Talbot Hall** has been entered into the National Register of Historic Places. The property was listed by the United States Department of the Interior, National Park Service, on February 2, 2016.

I am sure this news is gratifying to you, and the Virginia Department of Historic Resources shares in your pleasure.

Sincerely,

Julie V. Langan
Director and State Historic Preservation Officer

Administrative Services
10 Courthouse Ave.
Petersburg, VA 23803
Tel: (804) 862-6408
Fax: (804) 862-6196

Eastern Region Office
2801 Kensington Avenue
Richmond, VA 23221
Tel: (804) 367-2323
Fax: (804) 367-2391

Western Region Office
962 Kime Lane
Salem, VA 24153
Tel: (540) 387-5443
Fax: (540) 387-5446

Northern Region Office
5357 Main Street
PO Box 519
Stephens City, VA 22655
Tel: (540) 868-7029
Fax: (540) 868-7033

Pollock, Susan

From: Straley, Matthew
Sent: Wednesday, April 13, 2016 11:04 AM
To: 'thetpcl@gmail.com'
Cc: Protogyrou, Andrew; Winn, Barclay; Ransom, Carlton; Pollock, Susan
Subject: new Planning Commission application
Attachments: Talbot Hall.pdf

Mr. Donegan,

Attached please find the application to designate the existing structure at 6651 Talbot Hall Court as a Norfolk Historic Landmark.

The purpose of this request is to designate the historic Talbot Hall manor house as a Norfolk Historic Landmark.

The item is tentatively scheduled for the May 26, 2016 Planning Commission public hearing.

Staff contact: Susan Pollock Hart at (757) 664-4765, susan.pollock@norfolk.gov

Thank You.

Matthew Straley
GIS Technician II

THE CITY OF NORFOLK
City Planning
810 Union Street, Suite 508
Norfolk, VA 23510
757-664-4769

Connect with us:
www.norfolk.gov

COMMONWEALTH of VIRGINIA

Department of Historic Resources

Molly Joseph Ward
Secretary of Natural Resources

2801 Kensington Avenue, Richmond, Virginia 23221

Julie V. Langan
Director

Tel: (804) 367-2323
Fax: (804) 367-2391
www.dhr.virginia.gov

March 2, 2016

Paige Pollard
Commonwealth Preservation Group
P.O. Box 11083
Norfolk, Virginia 23517

RE: Easement Offer, Talbot Hall, City of Norfolk

Dear Ms. Pollard:

Thank you for submitting an Easement Application Form dated February 18, 2016 on behalf of your client for the 0.42 acre Talbot Hall property located in the City of Norfolk. This property was listed on the Virginia Landmarks Register and the National Register of Historic Places in 2015 under Criterion C (Architecture) for its significance as a Federal-style house with late Georgian influence. In summary, your application indicated the following:

- Conveyance of a conservation easement over the 0.42 acre Talbot Hall property that prohibits division or subdivision.
- Provisions in the easement for protection of the entire exterior of the main historic dwelling, and its character-defining interior architectural features and spaces.
- Provisions in the easement for repair, rehabilitation, and modifications to the Talbot Hall dwelling.
- Provision in the easement for construction of a detached garage.

The Easement Acceptance Committee of the Virginia Department of Historic Resources ("DHR") met on February 29, 2016, conducted a comprehensive review of your application, evaluated the conservation values associated with the property, and recommended acceptance of the easement as proposed. Easement staff will present your application to the Virginia Board of Historic Resources ("Board") at its next meeting, to be held on March 17, 2016 at the Halsey Lecture Hall, Virginia Historical Society, 428 N. Boulevard, Richmond, Virginia, 23221.

The Board officially holds our historic preservation easements, which are administered by easement staff at DHR. Approval by the Board of the proposed easement does not necessarily imply approval of the specific easement terms as outlined in your application. The provisions of the easement, including any reserved rights or permitted uses, will be negotiated with easement staff as we proceed with the project. Approval by the Easement Acceptance Committee and the Board is also subject to a review of all title work associated with the property.

Your application indicated that the current owners would like to build flexibility in the easement in anticipation of the potential needs of future owners, particularly regarding repairs and upgrades to the Talbot Hall dwelling. The easement deed will not prohibit alterations or modifications to the Talbot Hall dwelling, and it will permit construction of accessory buildings or structures associated with residential uses, such as a garage. However, the language of the easement will provide a framework through which these types of alterations and new construction receive prior written approval by easement program staff. In general, staff uses the *Secretary of the Interior's Standards for the Treatment of Historic Properties* as guidance when reviewing project plans. Please also keep in mind that ground disturbing activities associated with new construction will also be subject to review by staff and may require professional archaeological survey.

Thank you again for your interest in protecting this historically significant property through a perpetual conservation easement. Please do not hesitate to contact me if you have any questions.

Sincerely,

Wendy Musumeci

Wendy Musumeci
Easement Program Coordinator
Office of Preservation Incentives
804.482.6096
Wendy.musumeci@dhr.virginia.gov

Cc: William Dashiell, Manager, TH-HL, LLC
Marcus Pollard, Commonwealth Preservation Group
Elizabeth Tune, DHR

COMMONWEALTH of VIRGINIA

Department of Historic Resources

Molly Joseph Ward
Secretary of Natural Resources

2801 Kensington Avenue, Richmond, Virginia 23221

Julie V. Langan
Director

Tel: (804) 367-2323
Fax: (804) 367-2391
www.dhr.virginia.gov

March 23, 2016

VIA ELECTRONIC MAIL ONLY

Paige Pollard
Commonwealth Preservation Group
P.O. Box 11083
Norfolk, Virginia 23517

RE: Easement Offer, Talbot Hall, City of Norfolk

Dear Ms. Pollard:

Thank you for submitting an Easement Application Form dated February 18, 2016 on behalf of your client for the 0.42 acre Talbot Hall property located in the City of Norfolk. This property was listed on the Virginia Landmarks Register and the National Register of Historic Places in 2015 under Criterion C (Architecture) for its significance as a Federal-style house with late Georgian influence.

The Easement Acceptance Committee of the Virginia Department of Historic Resources ("DHR") met on February 29, 2016 and recommended acceptance of the easement as proposed. The Virginia Board of Historic Resources ("Board") convened on March 17, 2016 and also recommended approval as proposed, subject to our mutual agreement on the terms and provisions of the easement deed.

Approval by DHR and the Board of this easement as outlined above is valid for two calendar years from the date of this letter. If the easement is not recorded within this time frame, the project will be presented again to the DHR Easement Acceptance Committee and the Board for reconsideration at its next regularly scheduled meeting. (See VDHR *Easement Program Policy #2: Acceptance of Easements*). Following Board approval, proposed

modifications that significantly alter the terms of your easement application and/or new information pertaining to the property or its conservation values may be presented to the Easement Acceptance Committee and Board for reconsideration at staff's discretion. Approval by the Easement Acceptance Committee and the Board is also subject to review of all title work associated with the property.

Thank you again for your interest in protecting this historic property through a perpetual conservation easement. Please do not hesitate to contact me if you have any questions.

Sincerely,

Wendy Musumeci

Wendy Musumeci
Easement Program Coordinator
Office of Preservation Incentives
804.482.6096
Wendy.musumeci@dhr.virginia.gov

Cc: William Dashiell, Manager, TH-HL, LLC
Marcus Pollard, Commonwealth Preservation Group
Elizabeth Tune, DHR

C: Dir., Department of City Planning

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

June 28, 2016

From: George M. Homewood, FAICP, CFM, Planning Director

Subject: Text amendment to section 14-4.2, "Festivals, bazaars, outdoor sale events, carnivals and circuses," of the *Zoning Ordinance* to increase the number of days allowed for such temporary events within the Pedestrian Commercial Overlay districts.

Reviewed: _____ **Ward/Superward**: Citywide
Ronald H. Williams, Jr., Deputy City Manager

Approved: _____ **Item Number:** **PH-6**
Marcus D. Jones, City Manager

I. **Staff Recommendation: Approval**.

II. **Commission Action:** By a vote of **7 to 0**, the Planning Commission recommends **Approval.**

III. **Request:** This request proposes to increase the number of days allowed for temporary events, not to include carnivals and circuses, within the Pedestrian Commercial Overlay districts.

IV. **Applicant: City Planning Commission**

V. **Description:**

- Currently, temporary events, such as festivals, bazaars, and outdoor sale events, are permitted to occur no more than 14 days per year while carnivals and circuses are permitted to occur no more than 21 days per year.
- The proposed text amendment would increase the maximum days allowed per year for festivals, bazaars, and outdoor sales events to 60 within any Pedestrian Commercial Overlay District (PCO) and would remain at 14 for properties outside of a PCO.
- In addition, events could occur for no more than seven consecutive days at a time.
- The maximum days permitted for carnivals and circuses would remain at 21 per year for all properties in the city.
- The proposed text amendment accomplishes the intent of the PCOs as well as increased support for business investment in the city, as championed by the city's general plan, *plaNorfolk2030*.

VI. Historic Resources Impacts:

N/A

VII. Public Schools Impacts:

N/A

Staff point of contact: Chris Whitney at 823-1253, chris.whitney@norfolk.gov

Attachments:

- Staff Report to CPC dated May 26, 2016 with attachments
- Proponents and Opponents
- Ordinance

THE CITY OF NORFOLK
CITY PLANNING

Planning Commission Public Hearing: May 26, 2016

Executive Secretary: George M. Homewood, FAICP, CFM

Planner: Chris Whitney, CFM

Staff Report	**Item No. 3**	
Applicant	**City Planning Commission**	
Request	**Zoning Text Amendment**	Amendment to section 14-4.2, "Festivals, bazaars, outdoor sale events, carnivals and circuses," of the *Zoning Ordinance* to increase the number of days allowed for such temporary events.

A. Summary of Request

This request is to increase the number of days, per year, permitted for festivals, bazaars, outdoor sale events, carnivals, and circuses, all of which are considered "temporary uses" by the *Zoning Ordinance*.

B. Plan Consistency

- The Enhancing Economic Vitality chapter of *plaNorfolk2030* includes an action calling for modifications to city processes, including zoning requirements, to support business investment.
  - The proposed changes to the *Zoning Ordinance* are consistent with the recommendations of that action.

C. Zoning Analysis

- Currently, temporary events, such as festivals, bazaars, and outdoor sale events, are permitted to occur no more than 14 days per year while carnivals and circuses are permitted to occur no more than 21 days per year.
- The proposed text amendment would increase the maximum days allowed per year for festivals, bazaars, and outdoor sales events to 60 within any Pedestrian Commercial Overlay District (PCO) and would remain at 14 for properties outside of a PCO.
- In addition, events could occur for no more than seven consecutive days at a time.
- The maximum days permitted for carnivals and circuses would remain at 21 per year for all properties in the city.
- The intent of PCOs is to encourage the location of specialty retail, entertainment, and restaurant uses in proximity to residential uses and in concentrations that will enable and encourage pedestrian movement between establishments at a scale of development that is more conducive to pedestrian activity than automobile domination.

- Additionally, the PCOs intend to maintain and enhance the commercial vitality of the surrounding business areas and reinforce the existing concentration of pedestrian oriented commercial activities.
- These temporary events can only occur on private property.
  - If temporary events are held on public property or in the right-of-way, approval would be required from the Departments of Public Works and Special Events.
- These temporary events are not considered outdoor flea markets, which are permitted only by special exception in the 35th Street PCO.

D. Transportation Impacts

N/A

E. Historic Resources Impacts

N/A

F. Public Schools Impacts

N/A

G. Environmental Impacts

N/A

H. AICUZ Impacts

N/A

I. Surrounding Area/Site Impacts

Allowing these temporary events within the PCOs for longer periods of time should not have a negative impact on the surrounding areas, which typically include commercial uses.

J. Payment of Taxes

N/A

K. Civic League

- A letter of support was received from the Riverview Village Business Association on April 28.
- A letter of support was received from the Park Place Business Association on May 12.
- A letter of support was received from the Ghent Business Association on May 24.

L. Communication Outreach/Notification

Legal notification was placed in *The Virginian-Pilot* on May 12 and 19.

M. Recommendation

Staff recommends that the text amendment request be **approved.** The proposed text accomplishes the intent of the PCOs as well as increased support for business investment in the city, as championed by the city's general plan, *plaNorfolk2030*.

Attachments:

Proposed text
Letter of Support from Riverview Village Business Association
Letter of Support from Park Place Business Association
Letter of Support from Ghent Business Association

Proponents and Opponents

Proponents
None

Opponents
None

05/24/2016 lds

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved: CW

By _____
DEPT.

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE TO AMEND SECTION 14-4.2 OF THE ZONING ORDINANCE OF THE CITY OF NORFOLK, 1992, SO AS TO INCREASE THE NUMBER OF DAYS ALLOWED FOR TEMPORARY FESTIVALS, BAZAARS, AND OUTDOOR SALE EVENTS IN PEDESTRIAN COMMERCIAL OVERLAY DISTRICTS.

- - -

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

Section 1:- That Section 14-4.2 of the Zoning Ordinance of the City of Norfolk, 1992 (as amended), entitled "Festivals, bazaars, outdoor sale events, carnivals and circuses," is hereby amended and reordained so as to increase the number of days allowed for temporary festivals, bazaars, and outdoor sale events in Pedestrian Commercial Overlay Districts. The text shall read as forth in "Exhibit A," attached hereto.

Section 2:- The Council hereby finds that this zoning 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.

ATTACHMENT:
Exhibit A (1 page)

Exhibit A

14-4.2 *Festivals, bazaars, outdoor sale events, carnivals and circuses.* Festivals, bazaars, outdoor sale events, carnivals and circuses are permitted in any C, I, IN, OSP and D Districts; provided, however, that any such use shall require the zoning administrator's determination with regard to the adequacy of the parcel size, parking provisions, traffic access and the absence of undue adverse impact on adjacent properties. Such use shall be limited as follows:

(a) Carnivals and circuses shall be limited to a total of not more than 21 days per year.

(b) Bazaars and outdoor sale events held on property located in any Pedestrian Commercial Overlay district shall comply with the following limitations:

(1) The event shall be limited to no more than a total of 60 days per year and no more than seven (7) consecutive days;

(2) Any items or temporary structures associated with the event shall be removed from any outside area each day promptly after the event is closed; and

(3) The site on which the event is held shall be maintained free of debris and waste at all times.

(c) For all other uses and locations, the event shall be limited to no more than a total of 14 days per year.

(d) Such use need not comply with the yard requirements of this ordinance except that structures or equipment that might block the view of operators of motor vehicles on any public or private street shall not be located within the sight distance triangle defined in article I, chapter 2.

(e) Such use need not comply with the maximum height requirements of this ordinance.

(f) The concessionaire responsible for the operation of any such festival, bazaar, outdoor sale event, carnival or circus shall submit at least ten (10) calendar days in advance of the event date a site layout displaying adequate ingress and egress plan for emergency vehicles with no dead-end aisles.

Whitney, Chris

From: vernon fareed <mwsalaam@yahoo.com>
Sent: Thursday, May 12, 2016 8:07 AM
To: Whitney, Chris
Cc: Pollock, Susan
Subject: Re: Pending zoning text amendment - allowing more days for temporary events in PCOs

Chris,
We held our PPBA (Park Place Business Association) meeting on yesterday and the matter of extending the temporary events beyond the 14 days was brought to the attention of our members. We have no opposition to amending the zoning text to extend beyond 14 days for temporary events. If you need to contact me I can be reached at (757) 642-5074.
Thank You,
Vernon M. Fareed
PPBA President

On Wednesday, April 20, 2016 3:17 PM, "Whitney, Chris" <Chris.Whitney@norfolk.gov> wrote:

Mr. Fareed,

The Planning Department has received a request to amend the zoning ordinance to allow for temporary events to exceed the current maximum of 14 days per year. The application is tentatively scheduled to be heard by the Planning Commission at their May 26th public hearing. The requestor operates a business on 21st Street. Planning staff is currently proposing to allow more of these events just in the PCOs, as opposed to the entire city. Therefore, we would like your input as the business association and key stakeholder in the 35th Street PCO.

I've attached the current text in the Zoning Ordinance pertaining to temporary events, as well as our current proposal for the amendments.

Let me know if you have any questions or would like more clarification.

Thank you,

Chris Whitney, CFM
Management Analyst I

THE CITY OF NORFOLK
City Planning
810 Union Street, Suite 508
Norfolk, VA 23510
757-823-1253

Connect with us:
www.norfolk.gov

Ghent Business Association

May 24, 2016

City Council
City of Norfolk
City Hall
Norfolk, VA 23510

To whom it may concern,

The GBA would like to express its support to change the zoning text amendment to section 14-4.2. It is our understanding that this change would not apply to circuses and carnivals. If we have misunderstood the change, then we kindly ask that it be explained so we do not misinterpret the intent.

Sincerely,

Ted Enright
Corresponding Secretary
Development Committee Chairman
Ghent Business Association

P.O. Box 11571 • Norfolk, VA 23517

-----Original Message-----
From: President [mailto:rvba23504@yahoo.com]
Sent: Thursday, April 28, 2016 11:01 AM
To: CP - Planning
Subject: Special Events

Mr. Fraley, Commissioners,

I am writing in support of an application to increase Annual Special Events allowed from the current 14 days in PCO Districts. Currently Village Days is operating just outside our PCO 2 events per month spring through fall and our businesses can see a marked improvement on days of the events. Although Village Days is not located in the Riverview Village PCO it shows how these events can support local businesses. I support by Special Exception increasing the number of Special Events days outside the PCOs for events like Village Days that have such a positive impact.

My only concern for increasing the days inside a PCO would be the selling of alcohol and food from outside vendors that would be in competition to brick and mortar businesses but these issues are most likely already addressed in the PCO regulations.

These Special Events can help form and grow the relationship between the local businesses and the community.

Ted Warren
Owner Charlie's American Cafe
President
Riverview Village Business Association

C: Dir., Department of City Planning

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

June 28, 2016

From: George M. Homewood, FAICP CFM, Planning Director

Subject: **The closing, vacating and discontinuing of May Avenue and a 10' Lane**

Reviewed: Ronald H. Williams, Jr., Deputy City Manager

Ward/Superward: 3/7

Approved: Marcus D. Jones, City Manager

Item Number: **PH-7**

I. **Staff Recommendation:** **Approval**

II. **Commission Action:** By a vote of **7 to 0**, the Planning Commission recommends **Approval.**

III. **Request:** Street closures for portions of May Avenue, between East Virginia Beach Boulevard to the north and Booth Street to the south, and all of the remaining portion of a 10' Lane lying south of East Virginia Beach Boulevard, between May Avenue and Cecelia Street.

IV. **Applicant:** Norfolk Redevelopment and Housing Authority

V. **Description:**

- The rights-of-way to be closed are located entirely within the Central Brambleton community which is developed with a variety of residential, industrial and institutional uses.
- The closures are being advanced to support proposed new residential development east of May Avenue
- Closure of May Avenue will permit construction of an earthen berm to help buffer the neighborhood from the adjacent railroad tracks.
- Appropriate utility easements and adjustments related to the proposed closures have been made with the Norfolk Department of Utilities, Cox Communications and Dominion Virginia Power.
- This property, if closed, will convey to the Norfolk Redevelopment and Housing Authority at no cost.

VI. Staff point of contact: Jeffrey Raliski at 664-4766, jeffrey.raliski@norfolk.gov

Attachments:

- Ordinance
- Staff Report to CPC dated May 26, 2016 with attachments
- Proponents and Opponents

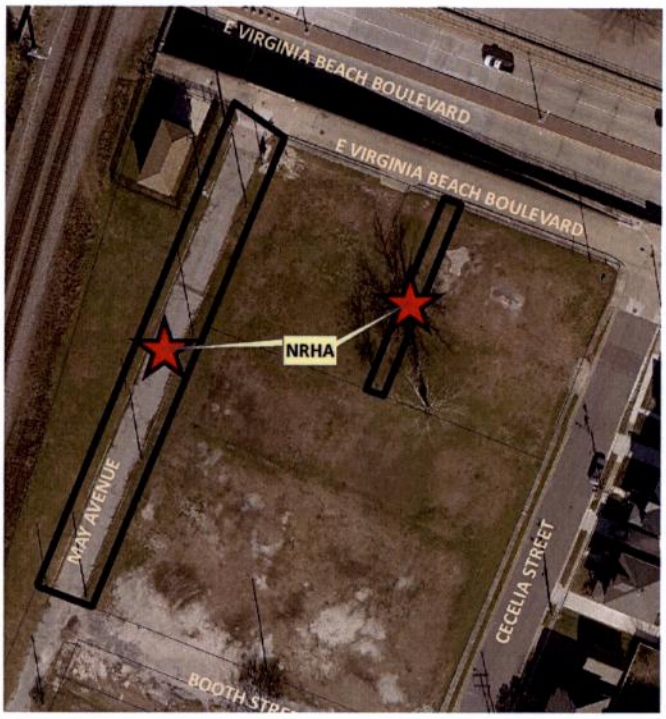
THE CITY OF NORFOLK
CITY PLANNING

Planning Commission Public Hearing: May 26, 2016

Executive Secretary: George M. Homewood, FAICP, CFM

Staff: Jeffrey K. Raliski, AICP

Staff Report	Item No. 14	
Applicant	Norfolk Redevelopment and Housing Authority	
Request	Street Closure of Portions of May Avenue and a 10' Lane	
Site Characteristics	Zoning	I-1 (Limited Industrial)
	Neighborhood	Central Brambleton
	Character District	Traditional
Surrounding Area	North	I-1, IN-1 (Institutional District): Office building and Booker T. Washington High School
	East	I-1: Vacant industrial property and mixed density residential community
	South	I-1: Vacant industrial property
	West	I-1: Vacant industrial property, City pump station and railroad tracks



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

A. Summary of Request

- The applicant proposes to close portions of May Avenue, between East Virginia Beach Boulevard to the north and Booth Street to the south, and all of the remaining portion of a 10' Lane lying south of East Virginia Beach Boulevard, between May Avenue and Cecelia Street.
- The closures are being advanced to support proposed new residential development east of May Avenue
- Closure of May Avenue will permit construction of an earthen berm to help buffer the neighborhood from the adjacent railroad tracks.
- The rights-of-way to be closed are located entirely within the Central Brambleton community which is developed with a variety of residential, industrial and institutional uses.
- The property will be incorporated into the adjacent parcels.
- Appropriate utility easements and adjustments related to the proposed closures have been made with the Norfolk Department of Utilities, Cox Communications and Dominion Virginia Power.

B. Financial Impact

- This property, if closed, will convey to the Norfolk Redevelopment and Housing Authority at no cost.
- The addition of the right-of-way to the adjacent parcels should positively impact the value of these properties.

C. Impact on Surrounding Area/Site

- The right-of-way proposed for closure is not an identified existing or planned pedestrian or bicycle route in Norfolk plans.
- Closure of these rights-of-way will not create additional traffic in the Central Brambleton community.

D. Historic Context and Impacts

The site is currently vacant and not located in any local, state or federal historic district.

E. Public School Impacts

This sites is located in the Richard Bowling Elementary School, Ruffner Academy, and Booker T. Washington High School Attendance Zones.

F. Civic League

Letter was mailed to the Central Brambleton Civic League President on April 13.

G. Community Outreach/Notification

- Legal notice on the property was posted on April 19.
- Letters were mailed to all property owners within 300 feet of the property on May 11.
- Legal notification was placed in *The Virginian-Pilot* on May 12 and May 19.

H. Recommendation

Staff recommends that the proposed closure of portions of May Avenue and 10' Lane be **approved**.

Attachments

- Location Map
- Zoning Map
- Application
- Notice to the Central Brambleton Civic League

Proponents
None

Opponents
None

4/1/2016 lds

Form and Correctness Approved

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT.

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE TO CLOSE, VACATE AND DISCONTINUE A PORTION OF MAY AVENUE AND A 10-FOOT LANE OFF VIRGINIA BEACH BOULEVARD, TO AUTHORIZE THE CONVEYANCE OF ANY INTEREST IN THE SAID VACATED RIGHT-OF-WAY BY QUITCLAIM DEED TO NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY.

- - -

WHEREAS, application to close, vacate and discontinue the hereinafter described portion of May Avenue and the 10-foot lane off Virginia Beach Boulevard, in the City of Norfolk has been made and the requirements of § 15.2-2006 of the Code of Virginia, 1950, as amended which relate to the vacation of streets and alleys, have been met; and

WHEREAS, it is the judgment of the Council that said right-of-way is not needed for public use and travel and should be closed, vacated and discontinued; now, therefore,

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

Section 1:- That the following described portion of May Avenue is hereby vacated and discontinued as a public street of the City of Norfolk:

> Being all of that portion of May Avenue, lying between Virginia Beach Boulevard to the north and Booth Street to the south, denoted as "A" on "Street Closure Plan of a Portion of May Avenue, Between Virginia Beach Boulevard and Booth Street and 10' Lane, Between Virginia Beach Boulevard and Southerly Terminus for Norfolk Redevelopment and Housing Authority, Norfolk, Virginia", and as shown on a plat entitled "East End Heights, Owned by Home Building and Investment Co." dated April 22, 1893, prepared by C.E. Foreman, C.E., recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia in Map Book 3 at Page 24; and as shown on a plat entitled "Property of

Mrs. Anna M. Brown, Situated on Turnpike", as recorded in Deed Book 199 at Page 408, in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia, and being further described as follows:
BEGINNING at a drill hole found at the southwest intersection of May Avenue and Virginia Beach Boulevard; thence, S 54°01'15" E, crossing May Avenue, 39.96 feet to an iron pin found at the southeast intersection of May Avenue and Virginia Beach Boulevard; thence, S 22°01'37" W, with the easterly right-of-way of May Avenue, 120.29 feet to an iron pin found; thence, N 68°34'03" W, continuing with the easterly right-of-way of May Avenue, 2.59 feet to an iron pin found; thence, S 21°50'57" W, continuing with the easterly right of way of May Avenue, 185.50 feet to an iron pin found at the northeast intersection of May Avenue and Booth Street; thence, N 68°34'03" W, with a prolongation of Booth Street, crossing May Avenue, 36.77 feet to the westerly right-of-way of May Avenue; thence, N 22'01'37" E, with the westerly right-of-way of May Avenue, 315.83 feet to the POINT OF BEGINNING, and containing 11,627 square feet or 0.267 acre.

Section 2:- That the following described ten-foot lane is hereby vacated and discontinued as a public street of the City of Norfolk:

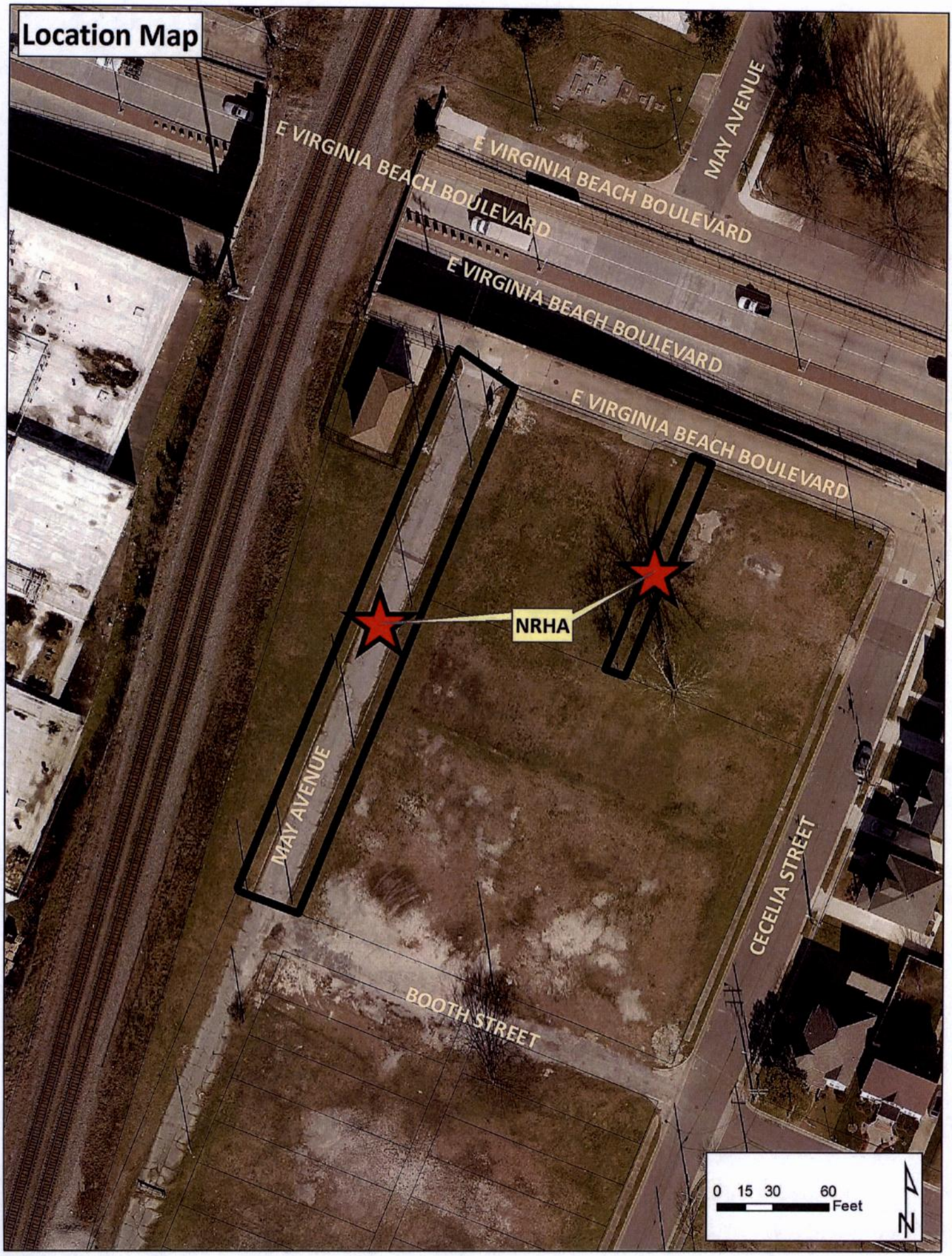
Being all of the remaining portion of a 10' Lane lying south of Virginia Beach Boulevard, between May Avenue and Cecelia Street, and running parallel thereto, denoted as "B" on "Street Closure Plan of a Portion of May Avenue, Between Virginia Beach Boulevard and Booth Street and 10' Lane, Between Virginia Beach Boulevard and Southerly Terminus for Norfolk Redevelopment and Housing Authority, Norfolk, Virginia", and as shown on a plat entitled "Property of Mrs. Anna M. Brown, Situated on Turnpike", as recorded in Deed Book 199 at Page 408, recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia, and being further described as follows:
COMMENCING at an iron pin found at the southeast intersection of May Avenue and Virginia Beach

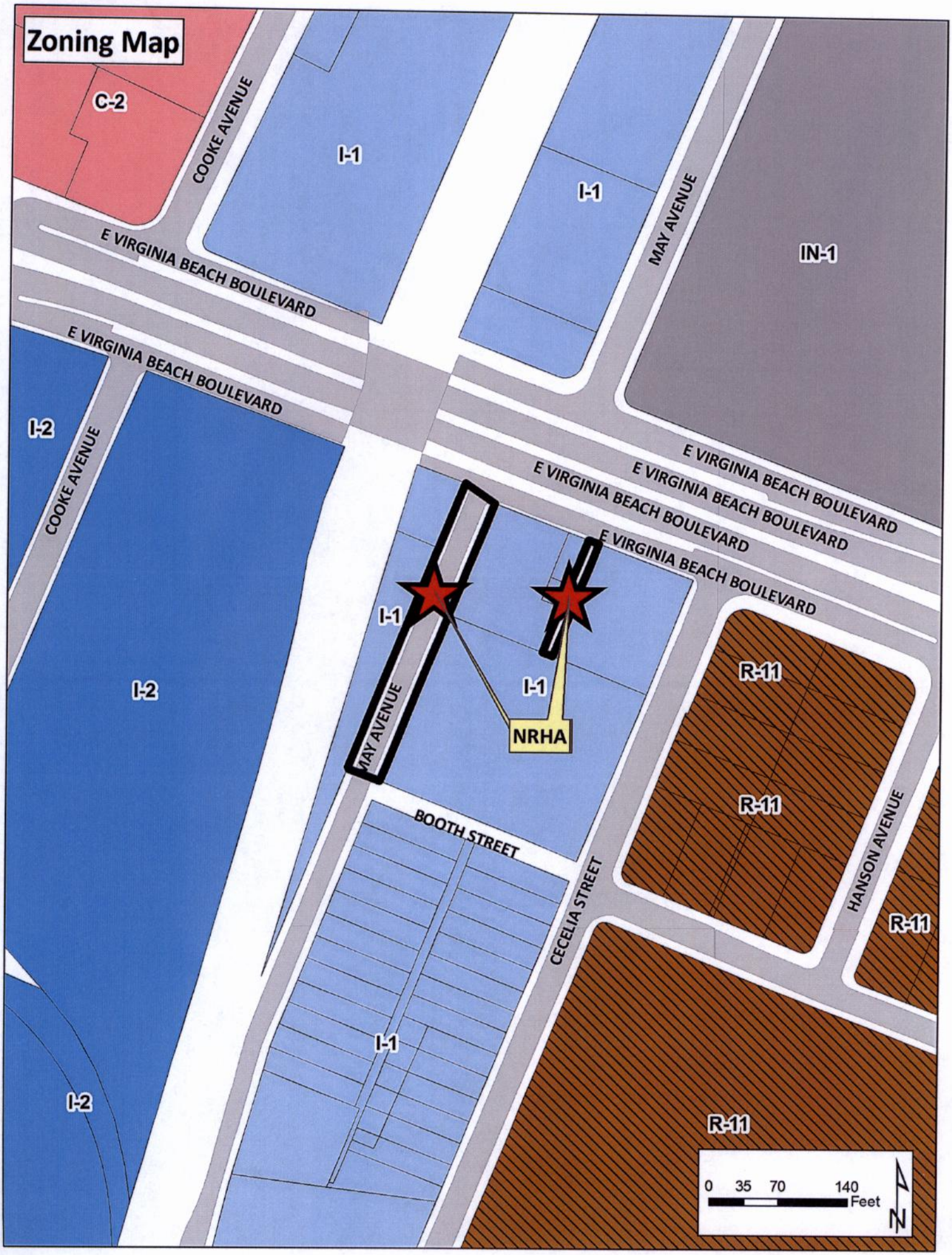
Boulevard; thence, S 68°23'23" E, with the southerly right-of-way of Virginia Beach Boulevard, 100.00 feet to an iron pin found at the southwest intersection of Virginia Beach Boulevard and a 10' Lane, being the true POINT OF BEGINNING;

Thence, from the true point of beginning, S68°23'23" E, crossing the 10' Lane, 10.00 feet to an iron pin found at the southeast intersection of Virginia Beach Boulevard and the 10' Lane; thence, S 22°01'37" W, with the easterly right-of-way of the 10' Lane, 119.99 feet to an iron pin at the southerly terminus; thence, N 68°34'03" W, with the southerly terminus of the 10' Lane, 10.00 feet to an iron pin found on the westerly right-of-way of the 10' Lane; thence, N 22°01'37" E, with the westerly right-of-way of the 10' Lane, 119.98 feet to the true POINT OF BEGINNING, and containing 1,200 square feet or 0.028 acre.

Section 3:- That the conveyance by quitclaim deed to Norfolk Redevelopment and Housing Authority, of any and all right, title and interest the City may possess in and to the above described property is hereby authorized.

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


Location Map
E VIRGINIA BEACH BOULEVARD
E VIRGINIA BEACH BOULEVARD
E VIRGINIA BEACH BOULEVARD
E VIRGINIA BEACH BOULEVARD
MAY AVENUE
MAY AVENUE
NRHA
CECELIA STREET
BOOTH STREET
0 15 30 60
Feet
N


Zoning Map
C-2
COOKE AVENUE
I-1
I-1
MAY AVENUE
IN-1
E VIRGINIA BEACH BOULEVARD
E VIRGINIA BEACH BOULEVARD
I-2
COOKE AVENUE
E VIRGINIA BEACH BOULEVARD
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E VIRGINIA BEACH BOULEVARD
E VIRGINIA BEACH BOULEVARD
I-1
I-1
NRHA
MAY AVENUE
I-2
R-11
R-11
BOOTH STREET
CECELIA STREET
HANSON AVENUE
R-11
I-1
I-2
R-11
0 35 70 140
Feet
N

Application for City Planning Commission Public Hearing

STREET CLOSURE

Street Closure Fee.....Treasurer, City of Norfolk $105

Date of application: 4/21/14

Name of Applicant or Adjacent Property Owner:

(Last) Montgomery (MI) R. (First) Shurl

Mailing address (Street/P.O. Box): NRHA - 201 Granby Street

(City) Norfolk (State) VA (Zip Code) 23510-1816

Daytime telephone (757) 314-1679 Fax (757) 640-0052 Email smontgomery@nrha.us

Email address of applicant:

Name of Representative (if different from Applicant):

(Last) McCormick (MI) S. (First) Nathaniel

Mailing address (Street/P.O. Box): NRHA - 201 Granby Street

(City) Norfolk (State) VA (Zip Code) 23510-1816

Daytime telephone (757) 314-2097 Fax (757) 314-1302 Email nmccormick@nrha.us

Description of Property (List street name and location of closure request):

(Street Name) A portion of May Avenue and the remaining portion of a 10' lane

(Location of closure request) Between Virginia Beach Boulevard and Booth Street

DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT
810 Union Street, Room 508
Norfolk, Virginia 23510
Telephone (757) 664-4752 Fax (757) 441-1569
(Revised July, 2013)

Street Closure Application
Page 2

(Zoning) I-1 (Land Area in acres or square feet) May Avenue: 11,627 sq ft
10' lane: 1,200 sq

Please describe the reason for requesting the closure:

To support residential redevelopment east of May Ave. Closure of the street will allow construction of an earthem berm to buffer the neighborhood from the adjacent Norfolk Southern railroad tracks.

List each **adjacent property owner** (print owner name and address) with signature of consent for the closure request. Use additional paper if needed:

Property Owner: City of Norfolk / _____
Print Name Signature
Address:

Property Owner: n/a / _____
Print Name Signature
Address:

Property Owner: _____ / _____
Print Name Signature
Address:

Property Owner: _____ / _____
Print Name Signature
Address:

Property Owner: _____ / _____
Print Name Signature
Address:

Property Owner: _____ / _____
Print Name Signature
Address:

CIVIC LEAGUE INFORMATION

Civic League contact: Karen Tanner

Date(s) contacted: November 20, 2012 - Civic League Meeting

Ward/Super Ward information: Ward 3 - Alveta Green

REQUIRED ATTACHMENTS

- ✓ Check for $105.00 made payable to: Treasurer, City of Norfolk.
- ✓ Two 8½ x14 inch copies of house plat or survey showing portion of right of way requested to be closed.
- ✓ Title Search of right-of-way to be closed.
- ✓ Appraisal of right-of-way to be closed, *conducted by MAI appraiser*, if necessary.

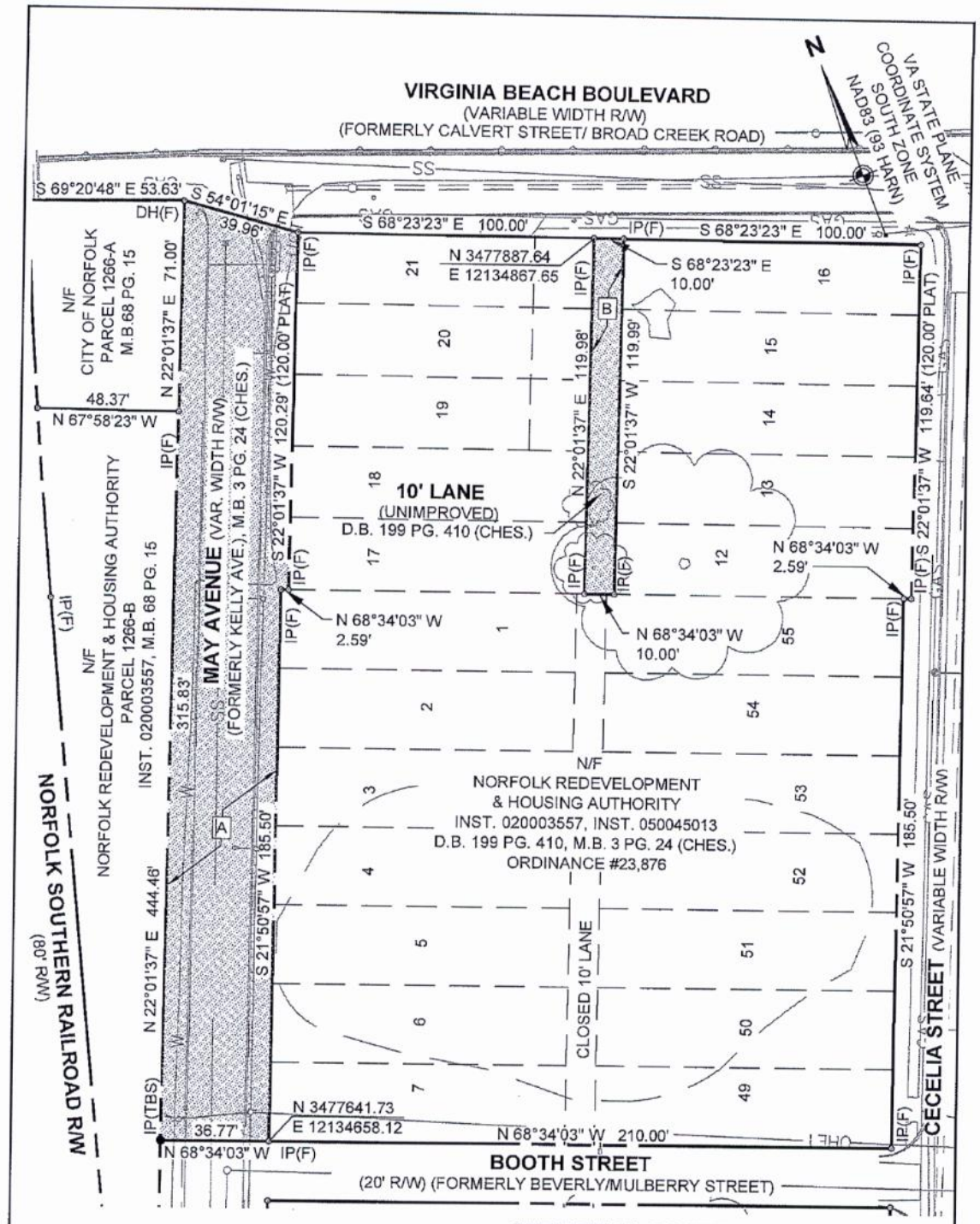
DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT
810 Union Street, Room 508
Norfolk, Virginia 23510
Telephone (757) 664-4752 Fax (757) 441-1569

CERTIFICATION:
I hereby submit this complete application and certify the information contained herein is true and accurate to the best of my knowledge:

SIGNED: _____ 3/26/14
(Applicant, adjacent property owner or authorized agent signature) (Date)

SIGNED: _____ 4/4/14
(Representative signature, as applicable) (Date)

DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT
810 Union Street, Room 508
Norfolk, Virginia 23510
Telephone (757) 664-4752 Fax (757) 441-1569



A PORTION OF MAY AVENUE RIGHT-OF-WAY TO BE CLOSED
AREA = 11,627 SQ. FT. OR 0.267 AC.

B 10' LANE (UNIMPROVED) RIGHT-OF-WAY TO BE CLOSED
AREA = 1,200 SQ. FT. OR 0.028 AC.

0 40 80 120
GRAPHIC SCALE IN FEET

STREET CLOSURE PLAN

OF A PORTION OF

MAY AVENUE

BETWEEN VIRGINIA BEACH BOULEVARD AND BOOTH STREET

AND

10' LANE

BETWEEN VIRGINIA BEACH BOULEVARD AND SOUTHERLY TERMINUS

FOR

NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY

NORFOLK, VIRGINIA

WOOLPERT
DESIGN | GEOSPATIAL | INFRASTRUCTURE

676 INDEPENDENCE PARKWAY
SUITE 100
CHESAPEAKE, VA 23320-5218
TEL: 757.549.3549
FAX: 757.549.3540

DES.	N/A	JOB NO.	72169.05
DRN.	JGB	SCALE	1" = 40'
CKD.	JGB	DATE	03/06/2013
		SHEET NO.	1 OF 1
		FILE NO.	AAA Street Closure.dwg

Raliski, Jeffrey

From: Straley, Matthew
Sent: Wednesday, April 13, 2016 11:43 AM
To: cbcl2@hotmail.com
Cc: Johnson, Mamie; Williams, Angelia M.; Howard, Oneiceia; Raliski, Jeffrey
Subject: new Planning Commission application
Attachments: NRHA Street Closure.pdf

Mr. Thompson,

Attached please find the application for the following street closures:

a. Being all that portion of May Avenue, lying between Virginia Beach Boulevard to the north and Booth Street to the south.
b. Being all of the remaining portion of a 10' Lane lying south of Virginia Beach Boulevard, between May Avenue and Cecelia Street.

The item is tentatively scheduled for the May 26, 2016 Planning Commission public hearing.

Staff contact: Jeff Raliski at (757) 664-4766, jeffrey.raliski@norfolk.gov

Thank You.

Matthew Straley
GIS Technician II

THE CITY OF NORFOLK
City Planning
810 Union Street, Suite 508
Norfolk, VA 23510
757-664-4769

Connect with us:
www.norfolk.gov

Archived: Wednesday, May 25, 2016 3:41:29 PM
From: Raliski, Jeffrey
Sent: Wednesday, May 25, 2016 3:32:26 PM
To: Simons, Matthew; Whitney, Chris
Subject: Fwd: Planning Commission - May Avenue Street Closure
Importance: Normal

Please add to the May Ave staff report. Thanks. Jeff

Sent from my iPhone

Begin forwarded message:

> **From:** Michael Clark <mclark@nrha.us>
> **Date:** May 25, 2016 at 3:20:38 PM EDT
> **To:** "'Raliski, Jeffrey'" <jeffrey.raliski@norfolk.gov>, Nathaniel McCormick <nmccormick@nrha.us>
> **Cc:** "Ken T (thompsonatlantic@gmail.com)" <thompsonatlantic@gmail.com>
> **Subject: RE: Planning Commission - May Avenue Street Closure**
>
> Good Afternoon Jeff:
> With the May Avenue Street Closure an agenda item for the May 26th Planning Commission meeting, we wanted provide a quick re-cap of NRHA's recent presentation to the Central Brambleton Civic League. Nat McCormick and I attended their May 17th Civic League Meeting to review the berm project and to clarity the need for the May Avenue street closure. There was good dialogue with the residents in attendance. We displayed a photo showing a general design of the berm in addition to a site plan illustrating the street closure. We discussed the berm in detail as well as several other community concerns. At the conclusion of our presentation, the Central Brambleton Civic League affirmed their support of the project.
>
> By copy of this email, I am asking that Ken Thompson please confirm the community support.
>
> Thanks for your help with this project and thanks to Ken for scheduling us in time for the May 26th Planning Commission meeting.
>
> **Michael G. Clark**
> **Real Estate Services Director**
> **Norfolk Redevelopment and Housing Authority**
> **757-533-4697**

NORFOLK

Office of the City Attorney

BERNARD A. PISHKO
City Attorney
WAYNE RINGER
MARY L. NEXSEN
NATHANIEL BEAMAN IV
MARTHA P. McGANN
CYNTHIA B. HALL
JACK E. CLOUD
HEATHER A. MULLEN
DEREK A. MUNGO
TAMELE YVETTE HOBSON
NADA N. KAWWASS
ADAM D. MELITA
MICHELLE G. FOY
MATTHEW P. MORKEN
HEATHER L. KELLEY
ERIKKA M. MASSIE
ZACHARY A. SIMMONS
KARLA J. SOLORIA
ALEX H. PINCUS

June 28, 2016

To the Honorable Council
City of Norfolk, Virginia

PH-8

Re: Ordinance Granting an Exemption from Real Estate Taxes for Real Property of Old Dominion Real Estate Foundation (the "Foundation")

Dear Ladies and Gentlemen:

This agenda item is to approve applications for tax exemption from Old Dominion Real Estate Foundation (the "Foundation") for six parcels. The Assessor is satisfied that the properties qualify for the exemptions, as the Foundation is a charitable/benevolent organization and the property is being used for a charitable purposes for which the Foundation was organized. The ordinance grants the exemptions in the amount of $25,215.50 annually.

Respectfully submitted,

Bernard A. Pishko
City Attorney

Recommendation: Adopt Ordinance

810 Union Street, Suite 900 • Norfolk, VA 23510
(757) 664-4529 • Fax: (757) 664-4201

6/2/16 MPM:sb RAP
Form and Correctness Approval:

By Martha P. McBann
Office of the City Attorney

Form CCO-003

Contents Approved:

By Bill Pahl
DEPT. REAL ESTATE ASSESSOR

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE GRANTING AN EXEMPTION FROM REAL ESTATE TAXES BY CLASSIFICATION FOR REAL PROPERTY OF OLD DOMINION REAL ESTATE FOUNDATION.

- - -

WHEREAS, Old Dominion Real Estate Foundation (the "Foundation") has filed two applications for exemption from real estate taxes for one parcel of real property located at 857 W. 40th Street (account number 5000-1000) and five parcels located at 865 W. 39th Street (account numbers 3385-4125, 3385-4179, 3385-4181, 3385-4183 and 3385-4322); and

WHEREAS, such applications were filed pursuant to the provisions of Section 24-212.5 of the Norfolk City Code, 1979, as amended; and

WHEREAS, Norfolk City Council has conducted a public hearing as required by Section 58.1-3651 of the Code of Virginia and has maturely considered all matters required by Section 24-212.5 of this code; and

WHEREAS, the Council finds that the Foundation satisfies the requirements for exemption from taxation under Section 24-212.5 of this code and specifically finds that:

(1) The Foundation is exempt from taxation pursuant to Section 501 (c) of the Internal Revenue Code of 1954;

(2) No current annual alcoholic beverage license for serving alcoholic beverages has been issued by the Virginia Alcoholic Beverage Control Board to The Foundation organization, for use on such property;

(3) No director, officer, or employee of the Foundation is paid compensation in excess of a reasonable allowance for salaries, or other compensation for personal services which such director, officer, or employee actually renders;

(4) No part of the net earnings of the Foundation inures to the benefit of any individual;

(5) A significant portion of the service provided by the Foundation is generated by funds received from donations, contributions, or local, state or federal grants, including the providing of personal services or the contribution of in-kind or other material services;

(6) The organization provides services for the common good of the public;

(7) Carrying on propaganda, or otherwise attempting to influence legislation is not a substantial part of the activities of the Foundation;

(8) The Foundation does not participate in, or intervene in, any political campaign on behalf of any candidate for public office;

(9) The revenue impact to the City and its taxpayers for the one parcel of real estate at 857 W. 40th Street and five parcels at and 865 W. 39th Street totaling $25,216.50 annually at the current rate of taxation; and

WHEREAS, the Council has considered other criteria, facts and circumstances deemed pertinent to the adoption of this ordinance; now, therefore,

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

Section 1:- That Old Dominion Real Estate Foundation, is hereby granted an exemption for from real estate taxes on one parcel of real property located at 857 W. 40th Street (account number 5000-1000) and five parcels located at and 865 W. 39th Street (account numbers 3385-4125, 3385-4179, 3385-4181, 3385-4183 and 3385-4322).

Section 2:- That the tax exemptions granted herein are based on the Council's finding that the Old Dominion Real Estate Foundation is a charitable/ benevolent organization within the meaning of Article X, Section 6, Subsection (a)(6) of the Constitution of Virginia, 1971, and Section 24-212.5 of the Norfolk City Code, 1979, as amended.

Section 3:- The exemptions granted herein are based upon Council's above findings, but can be revoked by Council for any reason.

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

NORFOLK

Office of the City Attorney

BERNARD A. PISHKO
City Attorney
WAYNE RINGER
MARY L. NEXSEN
NATHANIEL BEAMAN IV
MARTHA P. McGANN
CYNTHIA B. HALL
JACK E. CLOUD
HEATHER A. MULLEN
DEREK A. MUNGO
TAMELE YVETTE HOBSON
NADA N. KAWWASS
ADAM D. MELITA
MICHELLE G. FOY
MATTHEW P. MORKEN
HEATHER L. KELLEY
ERIKKA M. MASSIE
ZACHARY A. SIMMONS
KARLA J. SOLORIA
ALEX H. PINCUS

June 28, 2016

To the Honorable Council
City of Norfolk, Virginia

PH-9

Re: Ordinance Granting an Exemption from Real Estate Taxes for Real Property of First Baptist Church Berkley and/or Trustees Retroactive to September 1, 2010

Dear Ladies and Gentlemen:

This agenda item is an application for tax relief from First Baptist Church Trust Berkley and/or Trustees ("FBCB"), a church which failed to properly maintain its exemption, to complete the required application for tax exempt status. The Assessor is satisfied that the property houses a church and ancillary buildings and qualifies for the exemption with reason for assessment being the Church's failure to complete the required paperwork. The application requests that it be relieved of the consequences of failing to perfect the exemption to which it was entitled. The ordinance grants the exemptions retroactive to September 1, 2010 in the amount of $5,112.68.

Respectfully submitted,

Bernard A. Pishko
City Attorney

Recommendation: Adopt Ordinance

810 Union Street, Suite 900 • Norfolk, VA 23510
(757) 664-4529 • Fax: (757) 664-4201

6/8/16 MPM:sb

Form and Correctness Approval:

By Martha P. McBann
Office of the City Attorney

Form CCO-003

Contents Approved:

By
DEPT. REAL ESTATE ASSESSOR

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE GRANTING AN EXEMPTION FROM REAL ESTATE TAXES FOR REAL PROPERTY OF FIRST BAPTIST CHURCH, BERKLEY AND/OR TRUSTEES OF FIRST BAPTIST CHURCH, BERKLEY RETROACTIVE TO SEPTEMBER 1, 2010.

- - -

WHEREAS, First Baptist Church, Berkley and/or Trustees of First Baptist Church, Berkley ("FBCB") has filed an application for exemption from real estate taxes for two parcels of real property; and

WHEREAS, such application was filed pursuant to the provisions of §24-212.5 of the Norfolk City Code, 1979, as amended; and

WHEREAS, each parcel is exempt pursuant to Article X, § (6)(a)(2) of the Virginia Constitution as of September 1, 2010; and

WHEREAS, FBCB did not submit applications for exemption from taxation until February 24, 2015; and

WHEREAS, the revenue impact to the City and its taxpayers for granting retroactive exemption is $5,112.68; and

WHEREAS, the Council has considered other criteria, facts and circumstances deemed pertinent to the adoption of this ordinance; and

WHEREAS, it is the desire of this Council that FBCT's application for retroactive exemption to September 1, 2010 be granted; now, therefore,

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

Section 1:- That First Baptist Church, Berkley and/or Trustees of First Baptist Church, Berkley is hereby granted an exemption for Parcel No. 0080-9757 and Parcel No. 0080-9758 retroactive to September 1, 2010.

Section 2:- That the tax exemption granted herein is based on the Council's finding that the First Baptist Church, Berkley and/or Trustees of First Baptist Church, Berkley is a religious organization within the meaning of Article X, Section 6, Subsection (a)(2) of the Constitution of Virginia, 1971, and §24-212.5 of the Norfolk City Code, 1979, as amended.

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

C: Dir., Department of General Services

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

June 28, 2016

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

Subject: Conveyance of Buildable GEM Lots for Disposition Located at 1301 and 1303 Wilson Road to DPT Construction, LLC

Reviewed: Peter H. Chapman, Deputy City Manager

Ward/Superward: 4/7

Approved: Marcus D. Jones, City Manager

Item Number: **PH-10**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** DPT Construction, LLC
4004 Atlantic Avenue
Virginia Beach, Virginia 23451

III. **Description:**
This agenda item is an ordinance to dispose of two (2) vacant, non-standard size parcels of land owned by the City of Norfolk (the "City"). The parcels, located at 1301 and 1303 Wilson Road (the "properties"), are GEM Lots and were acquired by the City under § 58.1-3970.1 of the *Code of Virginia*, 1950, as amended. The parcels are 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 properties, which are located in the Campostella area of the City. The cost to DPT for purchase of the properties from the City is $22,400.00 (the total combined assessed value for both lots). This conveyance will enable the City to place the properties back on the tax rolls. No specific city use has been identified for the properties and therefore, conveyance to DPT is consistent with the goals of the Program.

V. **Financial Impact**

Cost for Conveyance	Twenty-two thousand four hundred dollars ($22,400)
Typical Costs of Closing	Each party to this transaction shall pay its own legal fees.
FY2016 Assessed Value of Parcel	Twenty-two thousand four hundred dollars ($22,400)
Annual Tax Revenue of Parcel	$257.60 annually (will increase upon development of properties – conveying the properties will enable the City to place the properties back on the tax rolls)

VI. Environmental

There are no known environmental issues associated with the properties.

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 ordinance has 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 – Legal Description of the Property
- Exhibit B – Proposed Conveyance Agreement

4/29/2016-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 CERTAIN PARCELS OF PROPERTY LOCATED AT 1301 AND 1303 WILSON ROAD FOR THE TOTAL SUM OF $22,400.00 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 parcels of real property located at 1301 and 1303 Wilson Road and more particularly described in Exhibit A, attached hereto and made a part hereof ("Property"), were 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. 070035684, 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 $22,400.00 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 1301 and 1303 Wilson Road and further described in Exhibit A, to DPT for the total sum of $22,400.00 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 $22,400.00, 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. 070035684 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 in the event DPT fails or refuses to execute a purchase and sale or other appropriate conveyance agreement within sixty (60) days of the effective date of this ordinance, the City Manager is authorized to withdraw the City's offer to sell the property to DPT.

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 No. 1576-3800

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 Lots 19 and 20 on that Amended Plat of Long Point Land Company which said plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia in Map Book 10, at page 67,

IT BEING the same property which was conveyed to the CITY OF NORFOLK by Special Commisioner's Deed from ROBERT S. FEREBEE and LUCILLE M. FEREBEE, dated August 15, 2007 and recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, as Instrument No. 070030947.

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 certain parcels of real property, together with all rights and appurtenances thereunto pertaining, located in the City of Norfolk, Virginia, known as 1301 and 1303 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. 070035684, 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. The conveyance of the Property to DPT will enable DPT 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.

E. 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 Twenty Two Thousand Four Hundred Dollars and 0/100 ($22,400.00). 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 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 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 DPT shall act as the settlement agent ("Settlement Agent") at DPT'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. 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 during the Feasibility Period, 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.

7. 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.

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:

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

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 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.

11. 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.

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 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.

(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

DPT CONSTRUCTION, LLC

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

COMMONWEALTH OF VIRGINIA
CITY OF _____, 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 DPT 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 No. 1576-3800

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 Lots 19 and 20 on that Amended Plat of Long Point Land Company which said plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia in Map Book 10, at page 67,

IT BEING the same property which was conveyed to the CITY OF NORFOLK by Special Commisioner's Deed from ROBERT S. FEREBEE and LUCILLE M. FEREBEE, dated August 15, 2007 and recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, as Instrument No. 070030947.

EXHIBIT B

Instrument Control Number

Commonwealth of Virginia
Land Record Instruments
Cover Sheet - Form A

070035684

2007 SEP 24 AM 10:04

[ILS VLR Cover Sheet Agent 1.0.66]

TAX EXEMPT | CORP

Date of Instrument: [9/19/2007]
Instrument Type: [DEC]

Number of Parcels [1]
Number of Pages [8]

City [x] County [ ] [City Of Norfolk] (Box for Deed Stamp Only)

First and Second Grantors

Last Name	First Name	Middle Name or Initial	Suffix
[Callahan]	[Sullivan]	[F]	[ ]
[Ferebee]	[Robert]	[S]	[ ]

First and Second Grantees

Last Name	First Name	Middle Name or Initial	Suffix
[City of Norofik]	[a Municipal Corporation]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]

Grantee Address (Name) [City of Norfolk]
(Address 1) [810 Union Str.]
(Address 2) [900 City Hall Bldg]
(City, State, Zip) [Norfolk] [VA] [23510]

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

Prior Instr. Recorded at: City [x] County [ ] [City Of Norfolk] Percent. In this Juris. [100]
Book [10] Page [67] Instr. No [ ]
Parcel Identification No (PIN) [1576-3800]
Tax Map Num. (if different than PIN) [ ]
Short Property Description [Plat of Long Point Land Company]
[Lots 19 and 20]
Current Property Address (Address 1) [W S Wilson Road]
(Address 2) [ ]
(City, State, Zip) [Norfolk] [VA] [23523]

Instrument Prepared by [City of Norfolk]
Recording Paid for by [ ]
Return Recording to (Name) [City of Norfolk - City Attorney's Office]
(Address 1) [810 Union Str]
(Address 2) [900 City Hall Bldg]
(City, State, Zip) [Norfolk] [VA] [23510]
Customer Case ID [ ] [ ] [ ]

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: [9/19/2007]
Instrument Type: [DEC]

Number of Parcels [1]
Number of Pages [8]
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			[Ferebee	][Lucille	][M	][ ]
				[	][	][	][ ]
				[	][	][	][ ]
				[	][	][	][ ]
				[	][	][	][ ]
				[	][	][	][ ]
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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
LOTS 19 & 20 (TAX ACCOUNT #1576-3800)

THIS DECLARATION, made this 19TH day of Sept, 2007, 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:

_____
Deputy City Attorney

STATE OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, Aurelia P. Trusty, 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, 2010, 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 Sept 19, 2007 have acknowledged the same before me in my City and State aforesaid.

Given under my hand this 19th day of September, 2007.

_____ [SEAL]
Notary Public

AURELIA P. TRUSTY NOTARY 7056192 PUBLIC COMMONWEALTH OF VIRGINIA

EXHIBIT A
Tax Account No. 1576-3800

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 Lots 19 and 20 on that Amended Plat of Long Point Land Company which said plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia in Map Book 10, at page 67.

IT BEING the same property which was conveyed to ROBERT S. FEREBEE AND LUCILLE M. FEREBEE by deed from WALLACE GARNER AND MILDREN C. GARNER, dated November 11, 1986 and recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Deed Book 1959, at page 236.

INSTRUMENT #070035684
RECORDED IN THE CLERK'S OFFICE OF
NORFOLK ON
SEPTEMBER 24, 2007 AT 10:04AM
GEORGE E. SCHAEFER, CLERK

RECORDED BY: JXM

C: Dir., Department of General Services

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

June 28, 2016

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

Subject: Conveyance of Buildable GEM Lots for Disposition Located at 2600 and 2604 Campbell Avenue

Reviewed: Peter H. Chapman, Deputy City Manager

Ward/Superward: 2/6

Approved: Marcus D. Jones, City Manager

Item Number: **PH-11**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Balance Builders, Inc.
2525 Oconee Avenue, #101
Virginia Beach, Virginia 23454

III. **Description:**
This agenda item is an ordinance authorizing the conveyance to Balance Builders, Inc. ("Balance Builders") of two (2) parcels of property located at 2600 and 2604 Campbell Avenue (the "properties"). The properties are GEM lots and were acquired by the City of Norfolk (the "City") under § 58.1-3970.1 of the *Code of Virginia*, 1950, as amended. The properties will be conveyed to Balance Builders under the GEM Side Lot for Development Disposition Program ("Program").

IV. **Analysis**
Balance Builders seeks to purchase the properties for development. Combined, the properties create a large, buildable corner lot. Balance Builders will purchase the properties from the City for the amount of $21,000 (the total combined *appraised* value for both lots). The appraised value differs from the assessed value because the property is subject to deed restrictions which limit its development to a single-family, owner-occupied home. Conveyance to Balance Builders 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 properties and the conveyance is consistent with the goals of the Program.

V. Financial Impact

Cost for Conveyance	Twenty-one thousand dollars ($21,000.00)
Typical Costs of Closing	Each party to this transaction shall pay its own legal fees.
FY2016 Assessed Value of Parcel	Twenty-one thousand dollars ($21,000.00)
Annual Tax Revenue of Parcel	$241.50 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 the properties.

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 ordinance has 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 – Legal Description of the Property
- Exhibit B – Proposed Conveyance Agreement

4/22/2016-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 BALANCE BUILDERS, INC. OF CERTAIN PARCELS OF PROPERTY LOCATED AT 2600 AND 2604 CAMPBELL AVENUE FOR THE TOTAL SUM OF $21,000.00 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 parcels of real property located at 2600 and 2604 Campbell Avenue and more particularly described in Exhibit A and shown on Exhibit B, attached hereto and made a part hereof ("Property"), were 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 Declarations of Protective and Restrictive Covenants

("Restrictive Covenants") in the Clerk's Office of the Circuit Court of the City of Norfolk, as Instrument Nos. 060001748 and 060002121, which documents provide, 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 Balance Builders, Inc. ("BB") for the sum of $21,000.00 upon the terms and conditions set forth in the Conveyance Agreement attached hereto as Exhibit C; and

WHEREAS, in order for any potential purchasers of the Property may 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 2600 and 2604 Campbell Avenue and further described in Exhibit A and shown on Exhibit B, to BB for

the total sum of $21,000.00 upon the terms and conditions set forth in the Conveyance Agreement attached as Exhibit C, 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 $21,000.00, to be disbursed in accordance with the requirements of Section 58.1-3970.1 of the Code of Virginia, to deliver to BB 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 BB.

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 BB 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 Declarations of Protective and Restrictive Covenants recorded in the Clerk's Office of the Circuit Court of the City of Norfolk as Instrument Nos. 060001748 and 060002121 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

Right-of-Way Reservation
Southeastern Corner of Campbell Avenue
and West 26th Street

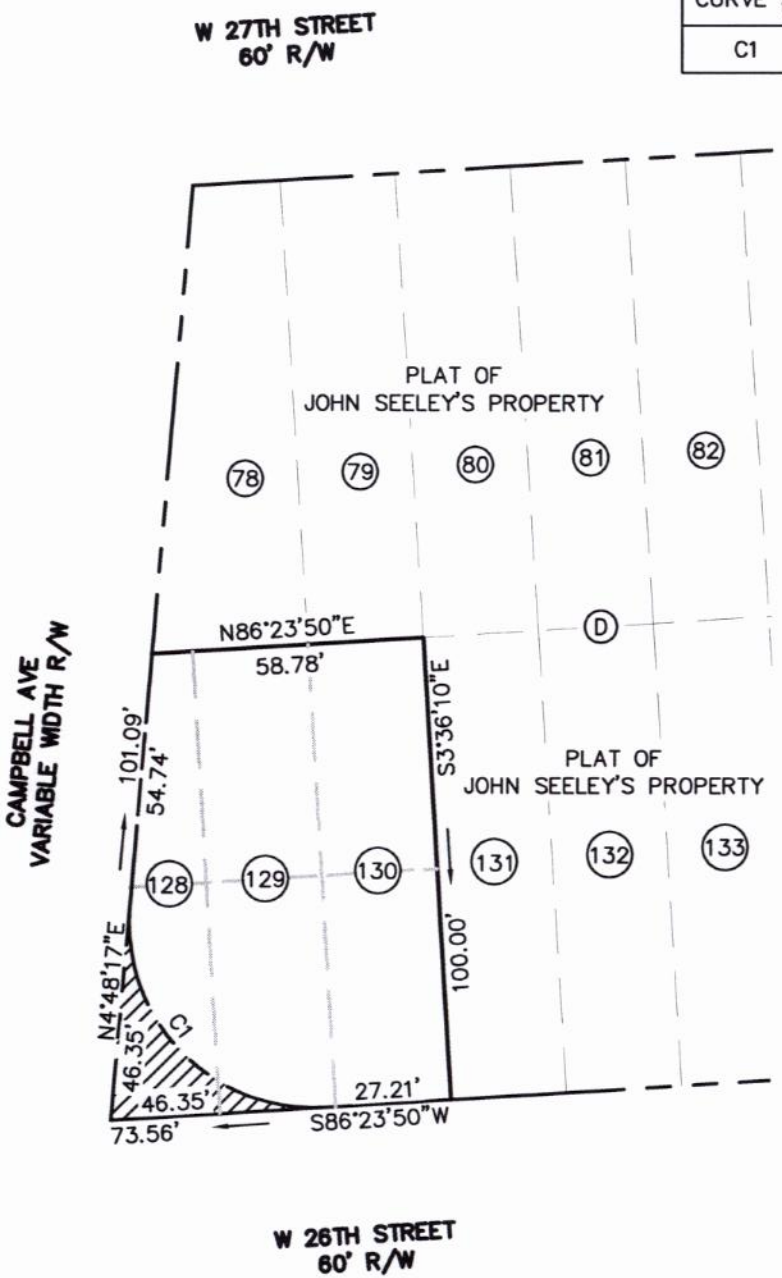
All that certain lot, piece or parcel of land situate, lying and being in the City of Norfolk, Virginia, said parcel being further described as follows: All of Lots 128-130, Block D, as shown on a plat entitled, "John Seeley's Property," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book 3, Pages 28-29, less and except a piece of land located along the eastern line of Campbell Avenue and being 54.74 feet south of the southern line of "Lots 78-79, Block D"; said point being the Point of Beginning; thence, turning along a curve to the left having a radius of 40.00 feet and an arc length of 68.70 feet to a point; said point being located along the northern line of West 26th Street; thence, continuing along the northern line of West 26th Street along a bearing of S86°-23'-50"W, 46.35 feet to a point; thence, in a northerly direction along the eastern line of Campbell Avenue, along a bearing of N04°-48'-17"E, 46.35 feet to the Point of Beginning, all as shown on that certain exhibit entitled "Exhibit Showing the Right-of-Way Reservation at the corner of Campbell Ave. & W 26th St." dated December 2, 2015.

The above-described parcel contains 0.011 acre of land, more or less.

December 9, 2015

EXHIBIT B TO ORDINANCE

CURVE TABLE						
CURVE #	LENGTH	RADIUS	CHORD LENGTH	CHORD BEARING	DELTA	TANGENT
C1	68.70'	40.00'	60.56'	N44°23'57"W	098°24'27"	46.35'



NOTES:
1. MERIDIAN SOURCE AND COORDINATES SHOWN HEREON ARE BASED ON THE VIRGINIA COORDINATE SYSTEM OF 1983, SOUTH ZONE (NAD83)(1993–HARN).
2. AREA OF LOTS 128–130 (EXCLUDING R/W DEDICATION) = 6,137 SQUARE FEET OR 0.141 ACRES.
   AREA OF R/W DEDICATION = 480 SQUARE FEET OR 0.011 ACRES.
3. PROPERTIES ACQUIRED BY THE CITY OF NORFOLK BY INSTRUMENT #050050573 AND DEED BOOK 2590, PAGE 705.

▨ = DENOTES AREA OF R/W RESERVATION

EXHIBIT SHOWING THE
RIGHT–OF–WAY RESERVATION AT THE
CORNER OF CAMPBELL AVE. & W 26TH ST.
NORFOLK, VIRGINIA

40 0 40 80
DRAWING SCALE 1"=40'

160100

DATE	SCALE	DRAWN BY	CHECKED BY
12/2/2015	1" = 40'	QMW	KCM

DIVISION OF SURVEYS
DEPARTMENT OF PUBLIC WORKS
NORFOLK, VIRGINIA

EXHIBIT C 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 **BALANCE BUILDERS, INC.**, a Virginia corporation ("BB").

RECITALS:

A. City is the owner in fee simple absolute of certain parcels of real property, together with all rights and appurtenances thereunto pertaining, located in the City of Norfolk, Virginia, known as 2600 and 2604 Campbell Avenue, less the reservation of a small parcel located at the southeastern corner of Campbell Avenue and W 26th Street for right of way purposes. The property is more particularly described in Exhibit A and shown on Exhibit B, 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 Declarations of Protective and Restrictive Covenants ("Restrictive Covenants") in the Clerk's Office of the Circuit Court of the City of Norfolk, as Instrument Nos. 060001748 and 060002121, copies of which are attached hereto as Exhibit C and Exhibit D, 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. BB desires to purchase the property from City and City desires to sell the property to BB 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 BB will enable BB to combine both lots and 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 BB agree as follows:

1. SALE. City agrees to sell and BB 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 Twenty One Thousand Dollars and 0/100 ($21,000.00). 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 BB by Special Warranty Deed, subject to applicable easements and restrictive covenants of record, and specifically the Restrictive Covenants attached hereto as Exhibit C and Exhibit D.

b. BB acknowledges that each lot being conveyed, standing alone, is not of sufficient size or dimension to permit the construction of a single family dwelling under the regulations of the City of Norfolk currently in effect

c. 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.

d. 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.

e. Possession of the Property will be given to BB at Closing.

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

g. City and BB agree that the attorney or title insurance company ("Title Company") selected by BB shall act as the settlement agent ("Settlement Agent") at BB'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. BB's obligations are expressly conditioned upon the satisfaction of each of the following conditions in the sole determination of BB, 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, BB 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 BB at BB's expense, and such other testing and reports as may be reasonably required by BB or recommended in the Phase I Report, any such additional testing and reports to be at BB's expense.

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

6. SOLD "AS IS"; NO REPRESENTATIONS AND WARRANTIES BY CITY. BB acknowledges that the City has made no representations or warranties whatsoever in regard to the Property, except for Special Warranty of Title. BB agrees that they have inspected and are thoroughly familiar with the Property and is acquiring the Property in its "as is" condition. BB 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:

BB: Balance Builders, Inc.
Attn: Geoffrey Wallace, President
2525 Oconee Avenue, #101
Virginia Beach, Virginia 23454

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 BB 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 BB'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 BB hereby designate and appoint the BB'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 BB 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 BB 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:

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

BALANCE BUILDERS, INC.

By:_____

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 Balance Builders, Inc., 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

Right-of-Way Reservation
Southeastern Corner of Campbell Avenue
and West 26th Street

All that certain lot, piece or parcel of land situate, lying and being in the City of Norfolk, Virginia, said parcel being further described as follows: All of Lots 128-130, Block D, as shown on a plat entitled, "John Seeley's Property," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book 3, Pages 28-29, less and except a piece of land located along the eastern line of Campbell Avenue and being 54.74 feet south of the southern line of "Lots 78-79, Block D"; said point being the Point of Beginning; thence, turning along a curve to the left having a radius of 40.00 feet and an arc length of 68.70 feet to a point; said point being located along the northern line of West 26th Street; thence, continuing along the northern line of West 26th Street along a bearing of S86°-23'-50"W, 46.35 feet to a point; thence, in a northerly direction along the eastern line of Campbell Avenue, along a bearing of N04°-48'-17"E, 46.35 feet to the Point of Beginning, all as shown on that certain exhibit entitled "Exhibit Showing the Right-of-Way Reservation at the corner of Campbell Ave. & W 26th St." dated December 2, 2015.

The above-described parcel contains 0.011 acre of land, more or less.

December 9, 2015

EXHIBIT C

Instrument Control Number

2006 JAN 12 A 10:21 000231

Commonwealth of Virginia
Land Record Instruments
Cover Sheet - Form A

JAN 12 060001748

[ILS VLR Cover Sheet Agent 1.0.66]

TAX EXEMPT	CORP		
		Date of Instrument:	[1/11/2006]
		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		[City of Norfolk]	[N/A]	[N/A]	[N/A]
		[Trapani]	[Philip]	[R.]	[Jr.]

First and Second Grantees

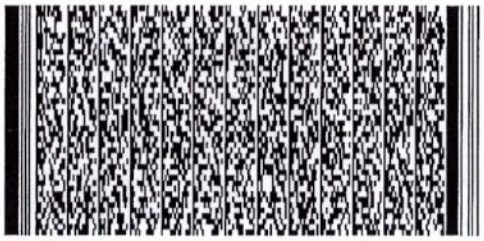
TAX EXEMPT	CORP	Last Name	First Name	Middle Name or Initial	Suffix
x		[City of Norfolk]	[a Municipal Corporation]	[ ]	[ ]
		[ ]	[ ]	[ ]	[ ]

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 [x] **County** [ ] [N/A] **Percent. in this Juris.** [0]
Book [N/A] **Page** [N/A] **Instr. No** [050050573]
Parcel Identification No (PIN) [4546-8300]
Tax Map Num. (if different than PIN) [n/a]
Short Property Description [1/2 of Lots 128, 129, 130, Block D]
[Plat of John Seeleys Property Lamberts Point]
Current Property Address (Address 1) [E S Campbell Avenue]
(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] [ ] [ ]



orlandus parker

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: [1/11/2006]
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			[Parker	][Orlandus, Trustee	][	][ ]
				[	][	][	][ ]
				[	][	][	][ ]
				[	][	][	][ ]
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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
E S CAMPBELL AVENUE (TAX ACCOUNT #4546-8300)

THIS DECLARATION, made this 4th day of January, 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 located at E S Campbell Avenue, City of Norfolk, Virginia, Tax Account #4546-8300 and more particularly 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:

_____ 12/1/05
Deputy City Attorney

STATE OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, Shelia M. Medu, 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 January 4, 2006 have acknowledged the same before me in my City and State aforesaid.

Given under my hand this 4th day of January, 2006.

Shelia M. Medu [SEAL]
Notary Public

Exhibit "A"
Tax Account # 4546-8300

ALL THOSE certain lots, pieces or parcels of land, with the buildings and improvements thereon, situate in the City of Norfolk, Virginia, and known, numbered and designated as the Northern One/Half (1/2) of Lots 128, 129 and 130, in Block "D:, as shown on the Plat of John Seeleys Property Lambert Point, which said plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia, in Map Book 3, at Pages 28 and 29.

INSTRUMENT #060001748
RECORDED IN THE CLERK'S OFFICE OF
NORFOLK ON
JANUARY 12, 2006 AT 10:21AM
GEORGE E. SCHAEFER, CLERK

RECORDED BY: MXY

EXHIBIT D

Instrument Control Number

2006 JAN 17 P 12:04 000270

Commonwealth of Virginia
Land Record Instruments
Cover Sheet - Form A

JAN.17 060002121

[ILS VLR Cover Sheet Agent 1.0.66]

TAX EXEMPT | CORP

Date of Instrument: [1/12/2006]
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		[City of Norfolk]	[N/A]	[N/A]	[N/A]
		[Callahan]	[F.]	[Sullivan]	[ ]

First and Second Grantees

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

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 [050052150]
Parcel Identification No (PIN) [2982-5500]
Tax Map Num. (if different than PIN) [2982-5500]
Short Property Description [S 1/2 of 128, 129, 130 Blk D]
[Lamberts Point]
Current Property Address (Address 1) [W S Campbell Avenue]
(Address 2) [ ]
(City, State, Zip) [ ] [ ] [ ]

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] [ ] [ ]

orlandus Parker

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: [1/12/2006]
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			[Parker	][Orlandus	][	][ ]
				[	][	][	][ ]
				[	][	][	][ ]
				[	][	][	][ ]
				[	][	][	][ ]
				[	][	][	][ ]
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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
2600 Campbell Avenue (Tax Account No. 2982-5500)

THIS DECLARATION, made this 4th day of January 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: Nancy Johnson [SEAL]
Asst. City Manager

Attest:

R. Breckenridge Daughtrey
City Clerk

Approved as to form and correctness:

12.14.05
Deputy City Attorney

STATE OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, Marietta B. Cowart, 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,~~ Nancy Johnson, Asst. 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 January 4, 2006 have acknowledged the same before me in my City and State aforesaid.

Given under my hand this 4th day of January, 2006.

Marietta B Cowart [SEAL]
Notary Public

EXHIBIT "A"
Tax Account Number 2982-5500

ALL THOSE certain lots, pieces or parcels of land, with the buildings and improvements thereon, and appurtenances thereunto belonging, numbered according to the present system of street number as 2600 Campbell Avenue in the City of Norfolk, Virginia, and known, numbered and designated as the southern half of Lots 128, 129 and 130 in Block 'D' as shown on plat of John Seeley's property - Lamberts Point, which plat is duly of record in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia, in Map Book 3, at pages 28 and 29, said lots or parcels of land, being more particularly bounded and described as follows:

BEGINNING at a point on the north side of 26th Street, formerly Seeley Avenue, 400 feet West of Elkhorne Avenue, formerly Maple Avenue, at the dividing line between Lots 130 and 131 as shown on said plat; thence northerly along the west side of Lot 131, 50 feet; thence westerly and parallel with the north side of 26th Street to the east side of Campbell Avenue; thence in a southerly direction along the east side of Campbell Avenue to the north side of 26th Street; thence easterly along the north side of 26th Street to the point of beginning.

INSTRUMENT #060002121
RECORDED IN THE CLERK'S OFFICE OF
NORFOLK ON
JANUARY 17, 2006 AT 12:04PM
GEORGE E. SCHAEFER, CLERK

RECORDED BY: OXJ

EXHIBIT A

Right-of-Way Reservation
Southeastern Corner of Campbell Avenue
and West 26th Street

All that certain lot, piece or parcel of land situate, lying and being in the City of Norfolk, Virginia, said parcel being further described as follows: All of Lots 128-130, Block D, as shown on a plat entitled, "John Seeley's Property," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book 3, Pages 28-29, less and except a piece of land located along the eastern line of Campbell Avenue and being 54.74 feet south of the southern line of "Lots 78-79, Block D"; said point being the Point of Beginning; thence, turning along a curve to the left having a radius of 40.00 feet and an arc length of 68.70 feet to a point; said point being located along the northern line of West 26th Street; thence, continuing along the northern line of West 26th Street along a bearing of S86°-23'-50"W, 46.35 feet to a point; thence, in a northerly direction along the eastern line of Campbell Avenue, along a bearing of N04°-48'-17"E, 46.35 feet to the Point of Beginning, all as shown on that certain exhibit entitled "Exhibit Showing the Right-of-Way Reservation at the corner of Campbell Ave. & W 26th St." dated December 2, 2015.

The above-described parcel contains 0.011 acre of land, more or less.

December 9, 2015

EXHIBIT C

Instrument Control Number

[ ]

2006 JAN 12 A 10:21 000281

Commonwealth of Virginia
Land Record Instruments
Cover Sheet - Form A

JAN. 12 060001748

[ILS VLR Cover Sheet Agent 1.0.66]

TAX EXEMPT | CORP

Date of Instrument: [1/11/2006]
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		[City of Norfolk]	[N/A]	[N/A]	[N/A]
		[Trapani]	[Philip]	[R.]	[Jr.]

First and Second Grantees

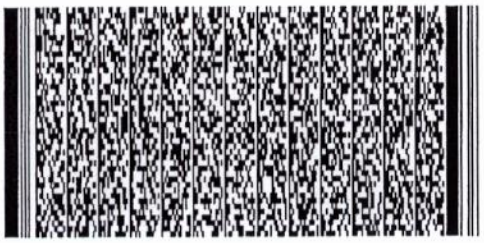
		Last Name	First Name	Middle Name or Initial	Suffix
x		[City of Norfolk]	[a Municipal Corporation]	[ ]	[ ]
		[ ]	[ ]	[ ]	[ ]

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 [x] County [ ] [N/A] Percent. in this Juris. [0]
Book [N/A] Page [N/A] Instr. No [050050573]
Parcel Identification No (PIN) [4546-8300]
Tax Map Num. (if different than PIN) [n/a]
Short Property Description [1/2 of Lots 128, 129, 130, Block D]
[Plat of John Seeleys Property Lamberts Point]
Current Property Address (Address 1) [E S Campbell Avenue]
(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] [ ] [ ]



orlandus parker

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: [1/11/2006]
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			[Parker	][Orlandus, Trustee	][	][ ]
				[	][	][	][ ]
				[	][	][	][ ]
				[	][	][	][ ]
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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
E S CAMPBELL AVENUE (TAX ACCOUNT #4546-8300)

THIS DECLARATION, made this 4th day of January, 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 located at E S Campbell Avenue, City of Norfolk, Virginia, Tax Account #4546-8300 and more particularly 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:

_____ 12/1/05
Deputy City Attorney

STATE OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, Sheila M. Medin, 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 January 4, 2006 have acknowledged the same before me in my City and State aforesaid.

Given under my hand this 4th day of January, 2006.

Sheila M. Medin [SEAL]
Notary Public

Exhibit "A"
Tax Account # 4546-8300

ALL THOSE certain lots, pieces or parcels of land, with the buildings and improvements thereon, situate in the City of Norfolk, Virginia, and known, numbered and designated as the Northern One/Half (1/2) of Lots 128, 129 and 130, in Block "D:, as shown on the Plat of John Seeleys Property Lambert Point, which said plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia, in Map Book 3, at Pages 28 and 29.

INSTRUMENT #060001748
RECORDED IN THE CLERK'S OFFICE OF
NORFOLK ON
JANUARY 12, 2006 AT 10:21AM
GEORGE E. SCHAEFER, CLERK

RECORDED BY: MXY

EXHIBIT D

Instrument Control Number

2006 JAN 17 P 12:04 000270

Commonwealth of Virginia
Land Record Instruments
Cover Sheet - Form A

JAN.17 060002121

[ILS VLR Cover Sheet Agent 1.0.66]

TAX EXEMPT	CORP

Date of Instrument: [1/12/2006]
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
[City of Norfolk]	[N/A]	[N/A]	[N/A]
[Callahan]	[F.]	[Sullivan]	[ ]

First and Second Grantees

Last Name	First Name	Middle Name or Initial	Suffix
[City of Norfolk]	[a Municipal Corporation]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]

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 [050052150]
Parcel Identification No (PIN) [2982-5500]
Tax Map Num. (if different than PIN) [2982-5500]
Short Property Description [S 1/2 of 128, 129, 130 Blk D]
[Lamberts Point]
Current Property Address (Address 1) [W S Campbell Avenue]
(Address 2) [ ]
(City, State, Zip) [ ] [ ] [ ]

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] [ ] [ ]

orlandus Parker

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: [1/12/2006]
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			[Parker	][Orlandus	][	][ ]
				[	][	][	][ ]
				[	][	][	][ ]
				[	][	][	][ ]
				[	][	][	][ ]
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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
2600 Campbell Avenue (Tax Account No. 2982-5500)

THIS DECLARATION, made this 4th day of January 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: Nancy Johnson [SEAL]
Asst. City Manager

Attest:

R. Breckenridge Daughtrey
City Clerk

Approved as to form and correctness:

12.14.05
Deputy City Attorney

STATE OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, Marietta B. Cowart, 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,~~ Nancy Johnson, Asst. 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 January 4, 2006 have acknowledged the same before me in my City and State aforesaid.

Given under my hand this 4th day of January, 2006.

Marietta B Cowart [SEAL]
Notary Public

EXHIBIT "A"
Tax Account Number 2982-5500

ALL THOSE certain lots, pieces or parcels of land, with the buildings and improvements thereon, and appurtenances thereunto belonging, numbered according to the present system of street number as 2600 Campbell Avenue in the City of Norfolk, Virginia, and known, numbered and designated as the southern half of Lots 128, 129 and 130 in Block 'D' as shown on plat of John Seeley's property - Lamberts Point, which plat is duly of record in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia, in Map Book 3, at pages 28 and 29, said lots or parcels of land, being more particularly bounded and described as follows:

BEGINNING at a point on the north side of 26th Street, formerly Seeley Avenue, 400 feet West of Elkhorne Avenue, formerly Maple Avenue, at the dividing line between Lots 130 and 131 as shown on said plat; thence northerly along the west side of Lot 131, 50 feet; thence westerly and parallel with the north side of 26th Street to the east side of Campbell Avenue; thence in a southerly direction along the east side of Campbell Avenue to the north side of 26th Street; thence easterly along the north side of 26th Street to the point of beginning.

INSTRUMENT #060002121
RECORDED IN THE CLERK'S OFFICE OF
NORFOLK ON
JANUARY 17, 2006 AT 12:04PM
GEORGE E. SCHAEFER, CLERK

RECORDED BY: DXJ

C: Dir., Department of General Services

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

June 28, 2016

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

Subject: Conveyance of property located at 227 West Freemason Street and 334 Duke Street to Virginia Historic Restoration Foundation

Reviewed: Sabrina Joy-Hogg, Deputy City Manager

Ward/Superward: 2/6

Approved: Marcus D. Jones, City Manager

Item Number: **PH-12**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Virginia Historic Restoration Foundation

III. **Description:**

This agenda item is an ordinance to permit the sale of the property owned by the City of Norfolk (the "city"), located at 227 West Freemason Street and 334 Duke Street (the "property"), to the Virginia Historic Restoration Foundation (the "Foundation") for the purpose of rehabilitation and restoration of the historic home.

IV. **Analysis**

The Foundation seeks to acquire the property, also known as the Taylor-Whittle House, for the purpose of restoring and rehabilitating the home. As part of the consideration for this transaction, the property will be conveyed expressly subject to restrictive covenants as set forth in Section 2.2 of the proposed purchase and sale agreement between the city and the Foundation. The restrictive covenants are imposed as covenants running with and binding upon the property. The city will have the right, power, and authority to enforce the restrictive covenants in the event of default by the Foundation.

V. **Financial Impact**

Purchase price	The Foundation will cover all costs related to the restoration and rehabilitation of Taylor-Whittle House.
Typical Costs of Closing	Each party to this transaction shall pay its own legal fees.
FY 2016 Assessed Value of Parcel	$800,800 (227 W. Freemason Street) $147,500 (334 Duke Street)
Annual Real Property Tax Revenue	N/A

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
- Purchase and Sale Agreement
- Aerial map

6/2/2016mr

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
Director, Dept. of General Services

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING THE TERMS AND CONDITIONS OF THE REAL ESTATE PURCHASE AND SALE AGREEMENT AND THE CONVEYANCE TO THE VIRGINIA HISTORIC RESTORATION FOUNDATION OF PROPERTY LOCATED AT 227 WEST FREEMASON STREET AND 334 DUKE STREET IN THE CITY OF NORFOLK.

- - -

WHEREAS, the City desires to sell and the Virginia Historic Restoration Foundation (the "Foundation") desires to purchase certain real property owned by the City and known as the Taylor-Whittle House, located at 227 West Freemason Street in the City of Norfolk, and the adjacent parcel located at 334 Duke Street in the City of Norfolk, as more particularly described in Exhibit A to the Real Estate Purchase and Sale Agreement (the "Agreement") attached hereto and made a part hereof (together, the "Property"); and

WHEREAS, negotiations by the Parties have produced this Agreement for the Foundation to purchase the Property and to rehabilitate and to restore the Property as described in detail in Foundation's Proposal, attached as Exhibit B to the Agreement; now, therefore,

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

Section 1:- That the conveyance by the City of Norfolk to the Virginia Historic Restoration Foundation of certain property located at 227 West Freemason Street and 334 Duke Street in the City of Norfolk is hereby approved and the Real Estate Purchase and Sale Agreement, a copy of which is attached as Exhibit "A", is hereby approved.

Section 2:- The City Manager is authorized to correct, amend, or revise the Real Estate Purchase and Sale Agreement as he may deem necessary in order to carry out the intent of the Council and to execute the Real Estate Purchase and Sale 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 from and after thirty (30) days from the date of its adoption.

EXHIBIT A

REAL ESTATE PURCHASE AND SALE AGREEMENT

BETWEEN

THE CITY OF NORFOLK, VIRGINIA

AND

VIRGINIA HISTORIC RESTORATION FOUNDATION

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement"), is made as of the 28th day of July, 2016, by and between the CITY OF NORFOLK, VIRGINIA ("City" or the "Seller"), a municipal corporation of the Commonwealth of Virginia, and VIRGINIA HISTORIC RESTORATION FOUNDATION, a nonstock Virginia corporation (the "Foundation" or the "Buyer"). The parties to this Agreement may be collectively referred to by the term "Parties" or individually as "Party".

RECITALS:

A. The City desires to sell and Foundation desires to purchase certain real property owned by the City and known as the Taylor-Whittle House, located at 227 West Freemason Street in the City of Norfolk (the "Taylor-Whittle House"), and an adjacent parcel located at 334 Duke Street in the City of Norfolk (the "Duke Street Property"), both more particularly described in Exhibit A attached hereto and made a part hereof (collectively the Taylor-Whittle House and the Duke Street Property being referred to herein as the "Property") (collectively the "Conveyance");

B. Negotiations by the Parties have produced this Agreement for the Foundation to purchase the Property and to rehabilitate and to restore the Property as described in detail in Foundation's Proposal, which is hereto incorporated by reference and attached as Exhibit B.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

DEFINITIONS OF TERMS

When used in this Agreement with an initial capital letter or letters, each of the following terms shall have the meaning given it below.

(a) "City" means the City of Norfolk.

(b) "Closing Date" means the date established pursuant to Section 3.1 of this Agreement.

(c) "Agreement" means this Real Estate Purchase and Sale Agreement between the City and the Foundation.

(d) "Foundation's Proposal" means Foundation's narrative describing Foundation's plan to rehabilitate and to restore the Property and attached hereto and made a part hereof as Exhibit B.

(e) "Due Diligence Period" means the ninety (90) day period, commencing from the date of full execution of this Agreement by all parties after the City has obtained the "City Approval" (defined below). The Due Diligence Period shall be utilized by the Foundation to investigate the Property and to obtain the necessary information, assessments, studies, and the like (more particularly described in Section 4.1, below) which Foundation requires in its sole discretion before acquiring the Property (collectively the "Due Diligence"). If Foundation discovers information, in its Due Diligence, within the initial ninety (90) day Due Diligence Period, which Foundation determines requires further investigation, Foundation shall give City written notice thereof and the Due Diligence Period shall automatically be extended by an additional ninety (90) days. This Agreement may be terminated by the Foundation prior to the

end of the Due Diligence Period, as it may be extended. Foundation shall have the right of access to the Property to conduct its Due Diligence per Section 4.1, below.

(f) "City Approval" means the procedure whereby the City has executed this Agreement and has satisfied all legal and procedural requirements under all federal, state and municipal laws and ordinances necessary for the City to enter into this Agreement and to consummate the transaction contemplated herein by this Agreement (the "Conveyance") including: any and all required notices, advertisements and/or hearings; the adoption of an Ordinance by Norfolk City Council approving the Conveyance and authorizing the City Manager of the City of Norfolk, Virginia, to execute the "Deed" (defined below) and all documents related to the Conveyance but excluding any action of City's administrative departments and bodies and any action with respect to the acceptance by City or conveyance by City to Buyer of any property rights not currently contemplated by this Agreement. The cost and responsibility of satisfying all components of the City Approval shall be borne solely by the City.

(g) "Intended Use" means the intended use of the Taylor-Whittle House by the Foundation as a property listed on the National Register of Historic Places and the Virginia Landmark Register, in conjunction with the Duke Street Property, consistent with the purposes set forth in this Agreement.

(h) "Outside Closing Date" means the latest date on which "Closing" (defined below in Section 3.1) may occur as set forth in Section 3.1 of this Agreement.

(i) "Project" means the rehabilitation and restoration after Closing of the historic home known as Taylor-Whittle House located at the Property as more fully described in the Foundation's Proposal (the "Restoration").

(j) "Substantially Complete" or "Substantial Completion" means, with respect to the Project, the date when the Restoration is sufficiently completed so as to permit the Intended Use of the Property.

(k) "Unavoidable Delay" means a delay due to war, riots, civil commotion, strikes, labor disputes, embargoes, natural disaster, Acts of God or any other cause or contingency similarly beyond the control of the Parties or of the Foundation's contractors.

ARTICLE II

AGREEMENT TO CONVEY; AGREEMENT TO RESTORE THE PROPERTY

Section 2.1. Conveyance of Property "As Is".

City will convey fee simple title to the Property to Foundation by special warranty deed (the "Deed") which title shall be good and marketable and free of any liens, encumbrances, or other title defects which would prohibit or impair the use of the Property for the Intended Use, except for any "Permitted Encumbrances", as hereinafter defined. The City shall have reasonable time to cure any title defects which are not acceptable to Foundation in its sole discretion. The City, however, shall have the option of declining to cure any defect, and if the City does decline to cure any defect or does not cure any defect that it has agreed to cure, the Foundation shall have the right either to waive its title objections and to take title to the Property subject to such title defects, which shall be considered "Permitted Encumbrances" as defined in Section 3.6(a) of this Agreement, or to terminate this Agreement as its exclusive remedy for termination of this Agreement and any related claim. Foundation will accept from City the Property, subject to the terms and conditions hereinafter set forth. The City is conveying and Foundation is accepting the use and conveyance of the Property "as is."

Section 2.2. Restrictive Covenants.

The restrictive covenants contained in this Section 2.2 (the "Restrictive Covenants") are intended and designed to operate as covenants binding upon Foundation and its successors and assigns. The Restrictive Covenants are intended for the benefit of the Property, provided, however, with respect to the covenants set forth in Sections 2.2(a) and 2.2(b) below, only the City and any successor or assignee of the City that is a local governmental agency shall have the right, power and authority to enforce the Restrictive Covenants. The City shall have the right, power and authority (without the necessity of obtaining the consent of Foundation) to waive compliance with any of the Restrictive Covenants whenever it makes a determination, in its reasonable discretion, that such non-compliance or default does not materially interfere with the objectives or obligations of the City. In addition to, but not in lieu of, any other right or remedy for breach of any one or more of the Restrictive Covenants, the City shall be entitled to seek injunctive relief, without necessarily showing monetary or special damages and without posting bond or security for a bond for the award of a permanent injunction. The violation of any of the Restrictive Covenants, and the exercise of any right or remedy for breach of any of such covenants, shall not cause a reversion or forfeiture of title. The Parties recognize that the rehabilitation and operation of the Property in a manner that is in the best interests of both Parties may from time to time require the confirmation, clarification, amplification or elaboration of the Restrictive Covenants in order to deal adequately with circumstances that may not now be foreseen or anticipated by the Parties.

As part of the consideration for this transaction, the Property shall be conveyed expressly subject to the following Restrictive Covenants that are to be imposed as covenants running with and binding upon the Property:

(a) Once the Restoration is Substantially Complete, any land area within the Property not occupied by structures, hard surfacing, or vehicular driveways shall be kept planted with grass, trees, and plants or shrubbery and maintained in a healthy condition and neat appearance. In the event of a default by Foundation, or its successors and assigns, in the planting or maintenance obligations set forth in this Section 2.2(a), which default continues for a period of thirty (30) business days after receipt by Foundation of written notice thereof, the required planting and maintenance work may be completed by the City at the sole cost and expense of Foundation, its successors and assigns, and Foundation shall reimburse City for the costs thereof within thirty (30) days after receipt of an invoice therefor.

(b) Once the Restoration is Substantially Complete, the Taylor-Whittle House and its appurtenant premises will be maintained by Foundation in a sound condition and with a neat and well maintained appearance so as to meet the criteria, as they exist from time to time, for a property classified on the National Register of Historic Places, located in the Freemason area of the City of Norfolk, and the Virginia Department of Historic Resources (collectively the "Criteria"). Once the Restoration is Substantially Complete, necessary repairs, maintenance and upkeep of the Project, as required by the Criteria, will be performed by the Foundation so as to preserve the historic appearance, physical integrity, and the sanitary and safe condition of the Taylor-Whittle House and other improvements (collectively "Maintenance Obligations"). The Foundation shall be in default if it fails to satisfy its Maintenance Obligations set forth in this Section 2.2(b), which default continues for a period of thirty (30) days after receipt by the Foundation of written notice thereof and, if such default cannot reasonably be cured within such thirty (30)-day period, the Foundation fails to commence to cure such default within such thirty (30)-day period and to diligently continue to pursue such effort to cure to completion ("Maintenance Default"). Upon an occurrence of a Maintenance Default, the outstanding

Maintenance Obligations may be completed by the City at the sole cost and expense of Foundation, and Foundation shall reimburse City for the reasonable costs thereof within thirty (30) days after receipt of an invoice therefor.

(c) The Property is subject to the terms and conditions of that certain Deed dated September 22, 1974 and recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia (the "Clerk's Office") in Deed Book 1360 at page 593, wherein the Norfolk Historic Foundation transferred the Taylor-Whittle House to the City subject to all conditions, covenants, restrictions, easement and reservations of record, including, but not limited to, the reverter and other terms and conditions contained in the last will and testament of Edmonia Lee Whittle dated March 20, 1967, and recorded in the Clerk's Office in Will Book 46, at page 131 (the "Whittle Will"). The terms and conditions of the Whittle Will provide that the Property is to be restored and preserved and that it be made reasonably available to the people of Norfolk as a historic landmark. Further, the Whittle Will provides that if any group to which the Property is conveyed expresses an unwillingness to continue to maintain the Property as a historic landmark, by resolution of its governing body, duly acknowledged and capable of being admitted to record, the Property shall revert to the heirs of Edmonia Lee Whittle. Purchaser shall provide public access to the Property as may be required by the Criteria and as required to satisfy the terms and conditions of the Whittle Will.

(d) The Restrictive Covenants shall be binding upon the City and Foundation and its successors and assigns, except that the Restrictive Covenants set forth in Sections 2.2(a) and 2.2(b) shall expire forty (40) years after the date of this Agreement.

It is intended and agreed hereby that the Restrictive Covenants shall be covenants running with the land and that they shall in any event, and without regard to technical

classification or designation, legal or otherwise, be binding upon the City and Foundation, respectively, as the case may be.

(e) Notwithstanding anything herein to the contrary, the Restrictive Covenants set forth in Sections 2.2(a) and 2.2(b) shall expire should either of the following occur: (i) the Property suffers a "Post-Closing Casualty" (defined below), after which the Foundation, or its successors or assigns, decides, in its sole discretion, not to restore the Property; or (ii) after Closing, all or any portion of the Property is taken under the power of eminent domain or is transferred in lieu of such a taking and such taking or transfer materially interferes, in the opinion of the Foundation, with Foundation's Restoration and/or Intended Use. Should either such event occur, the Foundation shall provide written notice to the City of its intention not to restore the Property and the City agrees to execute an instrument, in recordable form, confirming that the Restrictive Covenants in Section 2.2(a) and Section 2.2(b) are terminated.

Section 2.3. Title Insurance; Due Diligence.

Prior to the expiration of the Due Diligence Period, Foundation, at its expense, shall obtain a commitment for title insurance (the "Title Commitment") from a nationally recognized title company chosen by the Foundation and a survey of the Property (the "Survey"). The Foundation shall furnish copies of the Title Commitment and the Survey to the City, upon request.

City shall provide to the Foundation, within seven (7) days of the date of execution of this Agreement by all parties hereto, copies of all engineering studies and inspection reports regarding the Property which are in the possession of the City.

Foundation shall have the right of entry set forth in Section 4.1 (Right of Entry). In the event Foundation determines, in its sole discretion, that any aspect of the Property is

unsuitable for the Project or for the Intended Use, Foundation may terminate this Agreement by written notice thereof to the City prior to expiration of the Due Diligence Period, as it may be extended, and Foundation's sole remedy shall be such termination and neither party shall have any further obligations under this Agreement except as otherwise expressly provided in this Agreement.

Section 2.4. Risk of Loss and Insurance.

After Closing, the Foundation shall bear the risk of loss on the Property and all improvements thereon. Foundation shall, in its discretion, procure and maintain policies of fire insurance, with standard extended coverage endorsements; flood insurance and comprehensive liability insurance, on the Property with such terms and coverage amounts as the Foundation may deem appropriate (collectively the "Foundation Insurance"). Foundation agrees that, in the event the Property is partially or fully damaged or destroyed through accident (i. e. fire, flood, storm or other cause) ("Post-Closing Casualty"), Foundation may, in its sole discretion, and subject to the limits of the proceeds received by the Foundation from the Foundation Insurance, rebuild the improvements on the Property. Notwithstanding anything herein to the contrary, in the event of a Post-Closing Casualty, Foundation shall not be required to rebuild the improvements on the Property and attempt to replicate the historic design, construction and condition of the Property that existed prior to the Post-Closing Casualty.

Prior to Closing, City shall bear the risk of loss of the Property and any existing improvements. Loss of all or part of improvements on the Property prior to Closing in no way requires City to rebuild the existing improvements and in the event of a substantial loss that prohibits the Property from being rehabilitated, the City shall have the right, upon written notice to the Foundation, to terminate this Contract ("Pre-Closing Casualty Loss").

ARTICLE III

CLOSING AND PURCHASE PRICE

Section 3.1. Time and Place of Closing.

The closing ("Closing") shall take place at Office of the City Attorney, City Hall, 810 Union Street, Suite 900, Norfolk, Virginia 23510, or at any other location in Norfolk agreed to by the Parties, on a date which shall be the earlier of either (a) a date mutually satisfactory to Foundation and the City, or (b) thirty (30) days after all the conditions set forth in Section 3.3 and Section 3.4, below, have been satisfied (the "Closing Date") but in any event no later than January 31, 2017 ("Outside Closing Date").

Section 3.2. Consideration.

In consideration for the City's conveyance of the Property to Foundation, the Foundation agrees to restore and maintain the Property consistent with the Criteria.

Section 3.3. Conditions of Foundation's Obligation to Close.

The obligation of Foundation to close hereunder is expressly conditioned upon the fulfillment by and as of the Closing Date of each of the conditions listed below, provided, however, that Foundation at its election, evidenced by notice delivered to the City prior to or at the Closing, may waive any or all of the following conditions:

(a) All representations, warranties, acknowledgments and covenants made by the City in this Agreement shall be true and correct in all material respects and shall continue to be true and correct in all material respects at the date of Closing.

(b) No laws, statutes, ordinances, governmental orders, regulations, rules or requirements shall have been enacted, adopted, issued or otherwise promulgated, and/or shall be in force, that would prevent the Restoration and Intended Use of the Property in accordance with

this Agreement, the zoning, or in accordance with any related agreements to which the City is a party, or to which Foundation is a party.

(c) There shall be no material adverse change to the physical or environmental condition of the Property since the date of this Agreement.

(d) The City shall own good and marketable fee simple title to the Property free and clear of all liens and encumbrances except those permitted by this Agreement.

(e) The Foundation is satisfied with the results of its Due Diligence.

(f) City has obtained the City Approval.

Section 3.4. Conditions of City's Obligation to Close.

The obligation of the City to close hereunder is expressly conditioned upon the fulfillment by and as of the Closing Date of each of the conditions listed below, provided, however, that the City at its election, evidenced by notice delivered to Foundation prior to or at the Closing, may waive any or all of the following conditions:

(a) All representations, warranties, acknowledgments and covenants made by Foundation in this Agreement shall be true and correct in all material respects, and shall continue to be true and correct in all material respects at the date of Closing.

(b) No laws, statutes, ordinances, governmental orders, regulations, rules or requirements shall have been enacted, adopted, issued or otherwise promulgated, and/or shall be in force, that would prevent the rehabilitation and use of the Property in accordance with this Agreement, the zoning, or in accordance with any related agreements to which the City or Foundation is or are a party.

(c) City has obtained City Approval;

Section 3.5. Failure to Satisfy Conditions.

In the event that any of the conditions of a Party's obligation to close hereunder as set forth in Section 3.3 or 3.4 hereof are unsatisfied for any reason, that Party shall be entitled, but not obligated, upon notice delivered to the other Party to this Agreement on or prior to the Closing Date, to receive one adjournment of thirty (30) days of the Closing to a date no later than the Outside Closing Date, to enable that Party to satisfy or cause to be satisfied such conditions. If on the original or any adjourned Closing Date, any condition(s) of the obligation of a Party to close hereunder shall remain unsatisfied and has not been waived by such Party, then such Party shall have the right to terminate this Agreement upon thirty (30) days written notice to the other, and unless, during such thirty (30) day notice period, the Party entitled to terminate shall waive such condition(s) as provided above and agree to proceed to Closing hereunder, this Agreement shall immediately terminate and subject to the last sentence of Section 2.4., neither Party shall have any further rights hereunder or obligations to the other of any nature hereunder or by reason hereof. Notwithstanding the foregoing, with respect to a failure to satisfy any condition of the Closing that results from a Party's default under this Agreement, the provisions of this Agreement pertaining to such default, and to the Parties' respective rights, remedies and obligations in connection with such default, shall be applicable in addition to, or (in the non-defaulting Party's discretion) as an alternative to, the non-defaulting Party's aforesaid right of termination.

Section 3.6. Deliveries at Closing by City.

At the Closing, City will execute and deliver to Foundation the following:

(a) The properly executed and acknowledged special warranty Deed conveying good and marketable fee simple title to the Property free and clear of all liens and encumbrances except "Permitted Encumbrances," as defined herein, to Foundation subject to the

Restrictive Covenants described herein; "Permitted Encumbrances" shall mean all matters of record (except liens) that have not expired by time limitations contained therein or otherwise become ineffective or that were accepted by Foundation pursuant to the provisions of Section 2.1 of this Agreement.

(b) A certificate to the effect that the City is not a foreign entity subject to the withholding requirements of the Foreign Investment in Real Property Tax Act;

(c) A certified copy of the Ordinance adopted by the City authorizing the Conveyance;

(d) Any other document or instrument required hereunder or reasonably requested by Foundation or its title insurance company in order to consummate the transactions contemplated herein.

Section 3.7. Deliveries at the Closing by Foundation.

At the Closing, Foundation shall execute and/or deliver the following:

(a) Foundation shall deliver to the City the written opinion of counsel of Foundation, in form reasonably satisfactory to the City (assuming that all signatures are genuine, and further assuming that all documents presented to such counsel as copies conform with the originals), stating (1) that Foundation is a corporation, duly organized and validly existing entity under the laws of the Commonwealth of Virginia; (2) that Foundation has the power to enter into the transactions contemplated by this Agreement (including, without limitation, entry into this Agreement); (3) that all actions by Foundation required to be authorized in the transaction contemplated by this Agreement have been duly authorized; (4) that this Agreement and all documents required to effectuate the transactions contemplated hereby which are to be executed by Foundation (including, without limitation, all agreements and instruments to be executed by Foundation at the Closing) have been duly executed and delivered by Foundation, and constitute

binding obligations of Foundation, enforceable in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganizations, moratoriums or similar laws affecting the enforcement of creditors' rights generally and by legal and equitable limitation on the enforceability of specific remedies;

(b) Any other document or instrument required hereunder or reasonably requested by the City in order to consummate the transactions contemplated herein, which document or instrument will be in form and substance reasonably acceptable to Foundation, including, but not limited to, proof of Foundation's Insurance required by Section 2.4, which document or instrument will be in form and substance reasonably acceptable to City.

Section 3.8. Prorations. Proratable items relating to the Property will be prorated as of the date of Closing.

Section 3.9. Closing Costs. City is exempt from grantor's tax on the Deed. Foundation will pay all other recording taxes and fees in connection with the recordation of the Deed, the cost of its title insurance commitment and policy, the cost of obtaining the Survey which Foundation may order, and all other costs incurred in connection with its Due Diligence investigations of the Property. Each Party will pay its respective attorney's fees.

ARTICLE IV

ADDITIONAL COVENANTS

Section 4.1. Right of Entry. Commencing upon the date of full execution of this Agreement and continuing until the earlier of the termination of this Agreement or Closing, Foundation and its agents, representatives and contractors will have the right to enter the Property for the purpose of surveying the Property, conducting soil tests, environmental testing, and engineering studies and performing such other examinations as Foundation deems necessary to determine the suitability of the Property for its Intended Use, provided that any testing to be

done to the Taylor-Whittle House shall require the prior approval of the City, which approval shall not be unreasonably withheld, and shall be performed under the guidance of the City's Department of General Services. Foundation will keep the Property free and clear of all mechanics' liens and will indemnify, defend and hold the City harmless from and against any and all claims, liens, liabilities, damages, losses and costs (including reasonable attorneys' fees) arising from the exercise by Foundation of its right of entry under this Section. This indemnity will survive Closing and any termination of this Agreement. If the Closing does not occur, Foundation will repair any damage to the Property caused by Foundation's exercise of such right of entry.

Section 4.2. Condemnation. If before the Closing all or any portion of the Property is taken under the power of eminent domain or is transferred in lieu of such taking and such taking or transfer materially interferes, in the opinion of Foundation, with Foundation's contemplated restoration and the Intended Use of the Property, then either party may, at its option, (i) terminate this Agreement by notice to the other party within thirty (30) days after the terminating party is notified of such taking or transfer or (ii) proceed to Closing.

Section 4.3. Time is of the Essence. Time is of the essence as to the performance of the terms and conditions of this Agreement. To the extent any provisions of this Agreement specifically state that time is of the essence, such specific provisions are not intended to mean that time is not of the essence as to the remaining provisions of this Agreement.

Section 4.4. Foundation's Financing of the Restoration. Foundation anticipates that the financing for the Restoration shall come from public and private donations and grants. However, Foundation is unable to solicit or to apply for such financing until Foundation takes title to the Property. In the event Foundation is unable to secure such financing, Foundation intends to sell, transfer and convey the Property to a grantee which intends to place the Property

under a Historic Preservation Easement accepted by the Virginia Board of Historic Resources and the Virginia Department of Historic Resources (an "Easement Grantee"). If Foundation is unsuccessful in securing its financing or in finding an Easement Grantee within three (3) years after the date of Closing, title to the Property shall revert to the City at no cost to the City and the City and the Foundation shall execute any deed and related documents necessary to accomplish this reversion.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES

Section 5.1. Default by Foundation.

The occurrence of any of the following shall be an event of default by Foundation under this Agreement:

(a) The filing by Foundation of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors' rights;

(b) The consent by Foundation to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights;

(c) The entering of an order for relief against Foundation or the appointment of receiver, trustee, or custodian for all or a substantial part of the property or assets of Foundation in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of thirty (30) consecutive days;

The failure of Foundation to perform or to observe any covenant, obligation, condition or requirement of this Agreement not specifically named as a default in this Section 5.1, and the continuation of such failure for thirty (30) days after written notice from City specifying the nature and extent of any such default, or, if such default cannot reasonably be cured within such thirty (30)-day period, the failure either (i) to commence to cure such default

within such thirty (30)-day period and to diligently continue to pursue such effort to cure to completion, or (ii) to cure such default within a reasonable time after the expiration of the first thirty (30)-day period, in no event to exceed ninety (90) days after the written notice of default.

Section 5.2. Default by the City.

The occurrence of any of the following shall be an Event of Default by the City under this Agreement: The failure of the City to perform or observe any covenant, obligation or condition or requirement of this Agreement not specifically named to be a default in this Section 5.2. and the continuation of such failure for thirty (30) days after written notice from City specifying the nature and extent of any such default, or, if such default cannot reasonably be cured within such thirty (30)-day period, the failure either (i) to commence to cure such default within such thirty (30)-day period and to diligently continue to pursue such effort to cure to completion, or (ii) to cure such default within a reasonable time after the expiration of the first thirty (30)-day period, in no event to exceed ninety (90) days after the written notice of default.

Section 5.3 Remedies.

Upon the occurrence and continuance of any Event of Default described in Section 5.1 or Section 5.2 after written notice and expiration of any applicable cure period without cure, the non-defaulting Party may elect to terminate this Agreement by giving written notice of such termination to the defaulting Party, and this Agreement shall terminate as of the date specified in such notice (which date shall be on or after the date of the notice of termination).

ARTICLE VI

ASSIGNMENT LIMITATIONS

Except as otherwise specifically provided herein, Foundation may not assign this Agreement or any right, title or interest hereunder without the City's prior written permission. An assignment shall not relieve the assigning party from its obligations under this Agreement. Any purported assignment of this Agreement or of any right, title or interest hereunder not complying with this Article VI shall be void and of no force or effect.

ARTICLE VII

MISCELLANEOUS

Section 7.1. No Broker. Foundation and City each represent and warrant that no broker, to whom a commission, fee or other compensation is payable, is or has been involved in or brought about the transactions contemplated by this Agreement. Each of said Parties shall indemnify and hold the others harmless from any and all claims, obligations, liabilities, costs or expense (including reasonable attorneys' fees) incurred as a result of any claim for brokerage commissions, fees or other compensation by any person or entity who alleges having acted or dealt with the indemnifying Party in connection with the Property or the transactions contemplated by this Agreement. The Parties' obligations under this Section shall survive the Closing and any termination of this Agreement.

Section 7.2. Relationship of Parties. This Agreement is not to be construed to create a partnership or joint venture between the Parties.

Section 7.3. Negotiated Document. The Parties acknowledge that the provisions and language of this Agreement have been negotiated, and agree that no provision of this Agreement

shall be construed against any Party by reason of such Party having drafted such provision of this Agreement.

Section 7.4. Governing Law. This Agreement shall be governed and construed by the laws of the Commonwealth of Virginia. In the event of any action arising between the Parties with respect to the Property, venue shall be in the Circuit Court of the City of Norfolk.

Section 7.5. Successors and Assigns. The agreements, terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the City, Foundation, and except as otherwise provided herein, their respective successors and permitted assigns.

Section 7.6. Further Assurances. Each Party hereto shall do all acts and things and make, execute and deliver such written instruments as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement.

Section 7.7. No Amendment. Neither this Agreement nor any provisions hereof may be changed, modified, amended, supplemented, altered, waived, discharged or terminated except by an instrument in writing signed by both Parties and if required by any mortgage document, with the written consent of the applicable lender.

Section 7.8. Survival of Closing. The provisions of this Agreement shall survive the Closing.

Section 7.9. Effectiveness. This Agreement shall not be binding or effective until executed and delivered by the Parties hereto.

Section 7.10. Waiver. The failure of any Party to insist upon strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, of this Agreement nor be deemed to have been made unless expressed in writing and signed by such Party.

Section 7.11. Exhibits. Each Exhibit referred to in this Agreement is incorporated by reference and attached to this Agreement.

Section 7.12. Consent and Approvals.

(a) All consents and approvals which may be given under this Agreement shall be in writing, as a condition of their effectiveness. The granting of any consent or approval by a Party to perform any act requiring consent or approval under the terms of this Agreement or the failure on the part of a Party to object to any such action taken without the required consent or approval shall not be deemed a waiver by the Party whose consent was required or its right to require such consent or approval for any further similar act.

(b) If it is provided that a particular consent or approval is not to be unreasonably withheld, such consent or approval also shall not be unreasonably conditioned or delayed and any matter required to be done satisfactorily or to the satisfaction of a Party only be done reasonably satisfactorily or to the reasonable satisfaction of that Party.

Section 7.13. Interpretation. For the purpose of construing this Agreement, unless the context indicates otherwise, words in the singular number shall be deemed to include words in the plural number and vice versa, words in one gender shall be deemed to include words in other genders, and the word "person" shall be deemed to include a corporation or partnership. Headings of articles and sections are inserted only for convenience and are not, and shall not be deemed, a limitation on the scope of the particular articles or sections to which they refer.

Section 7.14. "Including". In this Agreement, whenever general words or terms are followed by the word "including" (or other forms of the word "include") and words of particular and specific meaning, the word "including without limitation," and the general words shall be construed in their widest extent, and shall not be limited to persons or things of the same general kind or class as those specifically mentioned in the words of particular and specific meaning.

Section 7.15. Notices. All notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be delivered by hand or by courier service, or sent by registered or certified mail, return receipt requested, bearing adequate postage and properly addressed as provided below. Each notice given by mail shall be deemed to be given by the sender when received or refused by the Party intended to receive such notice; each notice delivered by hand or by courier service shall be deemed to have been given and received when actually received by the Party intended to receive such notice or when such Party refuses to accept delivery of such notice. Upon a change of address by either Party, such Party shall give written notice of such change to the other Party in accordance with the foregoing. Inability to deliver because of changed address or status of which no notice was given shall be deemed to be receipt of the notice sent, effective as of the date such notice would otherwise have been received.

To City:
City Manager
1100 City Hall
810 Union Street
Norfolk, VA 23510

With a copy to:
City Attorney
Office of the City Attorney
810 Union Street, Suite 900
Norfolk, VA 23510

To Foundation:
Mr. Richard Taylor
_____
_____
_____

With a copy to:
E. Diane Thompson, Esquire and
James B. Lonergan, Esquire
Pender & Coward, P. C.
222 Central Park Ave., Su. 400
Virginia Beach, VA 23462

Section 7.16. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the Property and the Project and supersedes all prior understandings and writings, and this Agreement may be amended or modified only by a writing signed by City, and Foundation.

Section 7.17. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

Section 7.18. Recordation. This Agreement may be recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, at the expense of the Party seeking recordation.

WITNESS the following signatures:

CITY OF NORFOLK

By:_____
Name:_____
Title:_____

ATTEST:

_____
City Clerk

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by Marcus D. Jones, City Manager of the City of Norfolk and _____, Clerk of the City of Norfolk, who are personally known to me or have provided identification.

_____
Notary Public

My Commission Expires:_____

Registration No.:_____

APPROVED AS TO CONTENTS:

_____
Deputy City Manager

APPROVED AS TO FORM
AND CORRECTNESS:

_____
Assistant City Attorney

VIRGINIA HISTORIC RESTORATION FOUNDATION

By: _____
Title: _____
Date: _____

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by _____ as _____ on behalf of Virginia Historic Restoration Foundation, who is personally known to me or has provided identification.

_____
Notary Public

My Commission Expires: _____

Registration No.: _____

EXHIBIT A—LEGAL DESCRIPTIONS

The following are draft legal descriptions for 227 West Freemason Street, Norfolk, Virginia and 334 Duke Street, Norfolk, Virginia, which collectively comprise the "Property" described in the Real Estate Purchase and Sale Agreement dated as of July 28, 2016, between the City of Norfolk, Virginia, and Virginia Historic Restoration Foundation. It is agreed that the legal descriptions of the properties described below shall be updated and amended, if necessary, to reflect any changes in the legal descriptions as shown on a title insurance commitment of the Property to be obtained by Virginia Historic Restoration Foundation, subject to the approval of the Buyer and the City Surveyor of the City of Norfolk, which approval shall not be unreasonably withheld, conditioned or delayed.

PARCEL ONE: 227 West Freemason Street

All that certain piece or parcel of land, with the buildings and improvements thereon situate, lying and being in the City of Norfolk, Virginia, and described according to that certain "Plat showing Proposed Widening of Duke Street", dated August, 1970, revised November, 1970, prepared by the Division of Surveys of the City of Norfolk, and recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book 26, at page 36-I, as follows:

Beginning at the southeastern corner of Freemason and Duke Street, and proceeding thence along the southern side of Freemason Street South 68° 54' 18" East 75.93 feet to the property now or formerly belonging to Alexander L. Martone; thence along a line parallel to Duke Street South 21° 34' 42" West 95.5 feet to the northern boundary of the property now or formerly belonging to William M. Dabney, et al.; thence North 64° 54' 18" West 75.93 feet to the eastern line of Duke Street; thence along the eastern line of Duke Street North 21° 34' 42" East 95.5 feet to the point of beginning.

and

PARCEL TWO: 334 Duke Street

ALL THAT certain lot, piece or parcel of land, with any improvements thereon situate, lying and being in the City of Norfolk, Virginia, formerly numbered 332 Duke Street, and being more particularly described as follows:

Beginning at a point in the east side of Duke Street 95.8 feet, more or less, south of the southwest intersection of Duke Street and Freemason Street, and running thence eastwardly 71 feet, more or less, to a point; thence turning and running southwardly a distance of 41.56 feet, more or less, to a point; thence turning and running westwardly 71 feet, more or less, to a point in the east side of Duke Street a distance of 41.56 feet, more or less, to the point of beginning. This said property is shown on the old plat of Smith and Glebe, and is immediately south of and adjacent to property on the southeast corner of Duke Street and Freemason Street now (or formerly) belonging to the Norfolk Historic Foundation.

EXHIBIT B—FOUNDATION'S PROPOSAL

The Virginia Historic Restoration Foundation ("Foundation") is being organized by Judge Lydia Calvert Taylor and Mr. Richard Taylor. The Foundation will be a Virginia nonstock corporation and will be a not-for-profit organization. The mission of the Foundation will be the acquisition, rehabilitation or restoration, ownership, maintenance, preservation and utilization for historic and educational purposes of real property having historic significance and to stimulate the public's knowledge of and appreciation for the history of Norfolk, of the surrounding areas and of America.

The Foundation will apply to the IRS for recognition of its tax-exempt status as a 501(c)(3) organization which will enable it to solicit contributions to provide the funding for the rehabilitation or restoration of the Taylor Whittle House and other historically significant properties. It is anticipated that the financing for the rehabilitation or restoration of the Taylor Whittle House will be funded almost entirely by contributions.

Judge Taylor and Mr. Taylor, as founders of the Foundation, would like the Taylor-Whittle House, located at 227 W. Freemason Street, to be the first property to be rehabilitated or restored by the Foundation. Upon completion, the Taylor-Whittle House will be open for public visitation as envisioned by Miss Edmonia Whittle when she devised the property at her death and as spelled out in the guidelines of the National Trust for Historic Preservation.

The Foundation will enter into a rehabilitation agreement and conservation easements with the Virginia Board of Historic Resources (or another similar organization with the authority to administer such agreements) intended to continue in perpetuity. The intended rehabilitation is as discussed in the attached report entitled "Taylor Whittle House Assessment Update February 2015" with particular details of rehabilitation being on pages nine through twelve.

The Foundation would be empowered to sell a property to a qualified conservation buyer and use the proceeds therefrom to restore or rehabilitate other historically significant buildings.

The founders of the Foundation envision that the Norfolk Historical Society and the Junior League of Norfolk-Virginia Beach would once again use the Taylor-Whittle House as their meeting place, as they did in years past, as long as the Foundation continues to own the Taylor-Whittle House.

The Board of Directors of Virginia Historic Restoration Foundation will be composed of between five and ten members and represent a broad spectrum of organizations which have an interest in preserving history. It is anticipated that the initial Board of Directors will be composed of the following:

(1) Executive Director. The initial Executive Director will be Richard Taylor.

(2) Family Representative. The initial Family Representative will be Lydia C. Taylor who will hold office until her death, resignation, retirement, removal for cause, disqualification, or until she designates her successor. It is preferred, but not a requirement, that each successor Family Representative be from the Taylor Family.

(3) Norfolk Historical Society Representative. The initial Norfolk Historical Society Representative will be designated from the membership of the Norfolk Historical Society. Each successor Norfolk Historical Society Representative will be appointed by the

Norfolk Historical Society upon the recommendation of the then-serving Norfolk Historical Society Representative.

(4) Norfolk Preservation Alliance Representative. The initial Norfolk Preservation Alliance Representative will be designated from the membership of the Norfolk Preservation Alliance. Each successor Norfolk Preservation Alliance Representative will be appointed by the Norfolk Preservation Alliance upon the recommendation of the then-serving Norfolk Preservation Alliance Representative.

(5) Junior League of Norfolk – Virginia Beach Representative. The initial Junior League of Norfolk – Virginia Beach Representative will be designated from the membership of the Junior League of Norfolk – Virginia Beach. Each successor Junior League of Norfolk – Virginia Beach Representative will be appointed by the Junior League of Norfolk – Virginia Beach upon the recommendation of the then-serving Junior League of Norfolk – Virginia Beach Representative.

(6) Collegiate Representative. The initial Collegiate Representative will either a current professor or a professor emeritus at Norfolk State University, Old Dominion University, or Tidewater Community College and he or she will appoint his or her successor who must be either a current professor or a professor emeritus at Norfolk State University, Old Dominion University, or Tidewater Community College.

TMA

TYMOFF+MOSS ARCHITECTS

Taylor Whittle House Assessment Update

17 February 2015

TYMOFF+MOSS ARCHITECTS

Executive Summary

In January of 2015, Tymoff+Moss Architects was retained by the City of Norfolk's Department of Public Works to review and validate existing building assessment reports of the Taylor-Whittle House located at 227 West Freemason Street in Norfolk, Virginia.

The scope of this report includes:

- Review of Phase I Assessment Report by Hanbury Evans Wright Vlattas, 2002
- Review of Phase II Feasibility Assessment by Livas Group Architects, 2012
- Review of memorandum by Randy Lyall, 2013
- Revision (if needed) of recommendations based on code compliance
- Revision (if needed) of recommendations based on state and federal tax-credit rehabilitation standards
- Revision (if needed) of cost information
- Categorization of costs as code requirements or historic preservation requirements

Tymoff+Moss Architects was assisted by Commonwealth Preservation Group on historic rehabilitation issues and McPherson Design Group on structural engineering issues.

In general, the existing reports are very thorough in their documentation of the existing conditions. The revisions to repair-related recommendations mostly relate to conditions that were not visible during the previous inspections. The revision to historic preservation recommendations are intended to align more closely with state and federal tax-credit rehabilitation standards.

The revisions to cost information mostly involve inflating the costs for relevance in 2015. There were a number of items that appeared inaccurate due to clerical errors. Some items have been substantially changed based on local experience.

As the design of the repair and renovation work has not been completed, this report is general in nature. The better understand potential costs it would be beneficial to truly understand the intended use, scope of repair, and type and scope of renovation effort. Due to the renovation's small scale and specifically historic in nature budget estimating is difficult at this level. One possibility for refining cost projections would be to produce bridging design documents for contractor pricing.

Code Compliance

The intended use of the building post-renovation has been generally determined as office and meeting space, educational use, and open to the public for historic tours. The scope or extent of those uses and the way the building is prepared for those uses will affect the code compliance requirements. In general, Chapter 12 of the 2012 International Existing Building Code (IEBC) allows historic structures quite a bit of leeway contingent upon the approval of the building official.

The main points of code compliance can be broken down into Fire and Life Safety, Means of Egress, Structural, Electrical, Mechanical, Energy Conservation, and Accessibility.

Fire and Life Safety

The building is not required to have automatic fire-extinguishing systems, nor are exit signs required where they would damage the historic character of the building. A current code fire alarm system should be installed.

Means of Egress

Chapter 12 largely excuses historic buildings from extensive work to address means of egress so long as the existing conditions are reasonable and approved by the building official. A few doors may have to be re-hung to swing in the direction of egress, but the important historic doors (including the front door) are exempt.

The largest issue is whether or not the main stair rail is deemed structurally dangerous. We have assumed some amount of work for reinforcement.

Structural

The structural report performed by McPherson Design Group as part of the assessment by the Livas Group is largely still applicable. Per that report the project may require floor reinforcement over the entire second floor and the long span areas of the third floor. Specifically, the floor reinforcement may come in the form of laminated veneer lumber (LVL) placed directly adjacent to existing framing.

Since the McPherson report, a portion of the third floor plaster ceiling above the stairwell has collapsed. The revealed roof structure is in need of replacement. It is difficult to extrapolate a determination of the repairs needed, but an assumption will be made for costing purposes.

Electrical

The existing electrical system constitutes an unsafe condition and should be replaced to comply with current electrical codes.

Mechanical

The only requirements for applying current mechanical codes to existing buildings relate to kitchen and bathroom exhaust. The existing mechanical system is operational but not as efficient as it could be.

Energy Conservation

There are no requirements for applying current energy conservation standards to historic buildings. When the level of intervention allows, an effort should be made to upgrade the facility to promote lower energy consumption. For example, when the roofs are dismantled, inspected, and rebuilt they should be insulated to the extent possible. Any new electrical or mechanical systems should be as efficient as is economically prudent.

Accessibility

The IEBC requires that there are accessible parking spaces, an accessible entrance, an accessible route connecting the parking to the entry, and an accessible route from that entrance to primary function areas. This can be accomplished with the existing parking, sidewalk, and chair lift that provides access to the east porch. Inside the building, the existing restroom in the south addition would be reconfigured and elevated to match the floor level of the main house. This would provide the minimal amount of accessibility required.

To provide more comprehensive access an elevator could be installed within the boundaries of the east porch to access the second floor of the main house. The costs assume a small commercial elevator and accompanying enclosure. This level of accessibility would provide universal access to the most historically significant spaces within the house.

Historic Rehabilitation

There are many different options for retaining the historic nature of the Taylor-Whittle House. We have approached this report from a rehabilitation standpoint because it allows the most flexibility for modern conveniences without compromising the ability to pursue tax credits either now or in the future.

The U.S. Secretary of the Interior has established four levels of standards for the treatment of historic buildings. The standards are Preservation, Rehabilitation, Restoration, and Reconstruction. A brief summary of each is provided below.

Preservation

The standards for preservation prioritize retention of all remaining historic fabric through conservation, maintenance, and repair. The underlying philosophy is to ensure recognition of the evolution of the building over time. The Preservation standards significantly limit one's ability to alter the building for modern use.

Rehabilitation

Slightly less restrictive than Preservation, the Rehabilitation standards are also designed to ensure preservation of the historic features and historic alterations. However, the Rehabilitation standards are designed to accommodate necessary appropriate alterations required to comply with building code requirements and the needs of modern occupants.

Restoration

The Standards for Restoration require selection of a specific period of time which will be used to interpret the history of the building. Alterations made outside of that time period must be removed, thus limiting the ability to introduce modern technology and accommodations.

Reconstruction

Reconstruction standards are utilized for buildings which are no longer extant but have thorough written or photographic records. These standards are utilized when a resource will be recreated using all new materials.

Preservation, Rehabilitation, and Restoration would all be accepted maintenance treatments for the Taylor-Whittle House. A rehabilitation approach maintains the building's developmental history. The building's period of significance ends in 1922. Therefore, by rehabilitation standards, any modifications to the Taylor-Whittle House that occurred prior to this date would be considered historically significant and should be retained.

Appropriate rehabilitations of historic facilities can qualify for tax credits to help offset the costs of renovation. The state of Virginia offers a credit equivalent to 25% of qualified rehabilitation expenditures. The federal government offers an additional 20% credit available for income-producing properties. To obtain these credits, an owner must participate in a 3-part review process to fully disclose the proposed scope of work and its impact on historic material. State and federal tax credit reviewers will evaluate the proposed work and offer feedback on the project. As the referenced standards are highly philosophical in nature, the reviewers' decisions are strongly rooted in precedent.

The Secretary of Interior's Standards for Rehabilitation are:

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Mothballing would also be considered an acceptable temporary preservation alternative for the Taylor-Whittle House. The U.S. Department of the Interior and National Park Service have established Preservation Guidance for mothballing historic structures called Preservation Brief #31: Mothballing Historic Buildings. According to the preservation brief, "*when all means of finding a productive use for a historic building have been exhausted or when funds are not currently available to put a deteriorating structure into a useable condition, it may be necessary to close up the building temporarily to protect it from the weather as well as to secure it from vandalism. This process, known as mothballing, can be a necessary and effective means of protecting the building while planning the property's future, or raising money for a preservation, rehabilitation or restoration project*". Mothballing can protect a building for upwards of 10 years. The success of mothballing is dependent on the implementation of an appropriate maintenance and monitoring plan.

In general, proper long-term mothballing requires exterior stabilization, security protection, interior ventilation, and continued maintenance and surveillance monitoring. The nine steps involved in properly mothballing a building are:

Develop Historical Background and Context

1. Document the architectural and historical significance of the building.
2. Prepare a condition assessment of the building.

Stabilization

3. Structurally stabilize the building, based on a professional condition assessment.
4. Exterminate pests, including termites and rodents.
5. Protect the exterior from moisture penetration.

Mothballing

6. Secure the building and its component features to reduce vandalism or break-ins.
7. Provide adequate ventilation to the interior.
8. Secure or modify utilities and mechanical systems.
9. Develop and implement maintenance and monitoring plans for protection.

A copy of Preservation Brief #31: Mothballing Historic Buildings has been included in Appendix A for further information.

Cost Information

In general, the existing reports are very thorough in their documentation of the existing conditions. The previous cost estimate largely aligns with the observed deficiencies and recommendations made in the previous report.

The revisions to repair and code related recommendations mostly relate to conditions that were not visible during the previous inspections. The revision to historic preservation recommendations are intended to align more closely with state and federal tax-credit rehabilitation standards.

The revisions to cost information mostly involve inflating the costs for relevance in 2015. There were a number of items that appeared inaccurate due to omission or clerical errors. Some items have been substantially changed based on local experience.

The previous report included an allowance for archeological exploration. This was removed from the general contractor's portion of the work but retained in the overall project cost if such action was desired.

There was no discussion of possible site work either in the previous report or with any stakeholder. The intended use will likely have a great deal of impact on what, if any, work is performed on site. An allowance for site work has been included as a place-holder.

The projected total project cost is $2,378,423.

The revised cost estimate pages follow.

Summary

Construction Cost	TOTAL
Exterior	525,130
Interior	594,651
PME	431,096
Removals	5,611
Sitework Allowance	50,000
Construction Cost Subtotal	1,606,488
GC Overhead and Profit (12%)	192,779
Construction Cost Total	1,799,267
Fees & Miscellany	
Archeological Dig Allowance	20,000
Tax Credit Preparation Fees (estimate)	60,000
Professional Design Fees (10%)	179,927
Reimbursables (estimate)	3,000
Structural Special Inspections (estimate)	6,000
Contingency & Total	
Project Cost Subtotal	2,068,194
Project Contingency (15%)	310,229
Total Project Cost	**2,378,423**

Exterior Scope

Main House	QTY	Unit	Material	Labor	Sub Cost	TOTAL	Priority
Remove paint at stone work	250	SF	1,431	798	-	2,229	4
Remove and replace brickwork	480	SF	-	-	7,560	7,560	4
Repoint joints at second floor porch	480	SF	-	-	2,016	2,016	1
Clean all masonry	4800	SF	-	-	12,600	12,600	4
Remove and replace rotten wood trim	480	SF	5,040	3,024		8,064	1
Remove and replace stone lintels	10	EA	6,000	3,000		9,000	4
Replace missing shutters	14	EA	2,100	2,100		4,200	4
Repair protective bars at basement windows	9	EA	900	2,250		3,150	2
Restore lime wash finish at east porch	400	SF	-	-	1,400	1,400	4
Restore original window	23	EA	-	13,800	-	13,800	4
Replace storm windows	23	EA	3,450	3,450	-	6,900	2
Restore stucco rendering	640	SF	2,112	1,760	-	3,872	4
Repair roof structure	600	SF	1,980	2,640	-	4,620	1
Resheath roof, repair slate roof	2000	SF	33,000	27,000	-	60,000	1
Subtotal Cost			56,013	59,822	23,576	139,411	
Subcontractor Markups			5,769	6,162	2,428	14,359	
GC Markup			41,703	82,875		124,579	
Total						278,349	
Front Porch							
Refinish all wood surfaces	400	SF	4,200	10,500	-	14,700	4
Restore stucco renderings	2	EA	-	1,008	-	1,008	4
Remove & replace slate roof	120	SF	-	-	1,323	1,323	1
Replace sandstone step treads	8	EA	6,400	2,400	-	8,800	4
Restore molded column bases	2	EA	300	200	-	500	4
Provide new handrail	1	LS	1,500	500	-	2,000	4
Remove railing at steps	10	LF	-	100	-	100	4
Clean & restore bootscrapers	2	EA	-	150	-	150	4
Remove light and restore column lights	2	EA	410	200	-	610	4
Subtotal Cost			12,810	15,058	1,323	29,191	
Subcontractor Markups			1,319	1,551	136	3,007	
GC Markup			9,537	20,861		30,398	
Total						62,596	
East Porch							
Restore porch to original form	380	SF	-	-	21,945	21,945	4
Restore jib door & frame at second floor	2	EA	-	-	2,625	2,625	4
Restore paint & limewash at second floor	456	SF	-	-	1,400	1,400	4
Provide 2 stop elevator	1	LS	-	-	50,000	50,000	2
Provide elevator enclosure	1	LS	-	-	50,000	50,000	2
Subtotal Cost			-	-	125,970	125,970	
Subcontractor Markups			-	-	12,975	12,975	
GC Markup			-	-		-	
Total						138,945	
South Addition							
Clean & paint wall	1200	SF	-	-	3,105	3,105	4
Repair existing standing seam roof	271	SF	-	-	4,000	4,000	1
Restore original rear door	1	EA	-	-	1,312	1,312	4
Replace storm windows	2	EA	300	300	-	600	2
Restore original window	2	EA	-	3,500	-	3,500	4
Subtotal Cost			300	3,800	8,417	12,517	
Subcontractor Markups			31	391	867	1,289	
GC Markup			223	5,264		5,488	
Total						19,294	
Kitchen Wing							
Repair existing standing seam roof	598	SF	-	-	8,000	8,000	1
Restore door, frame, & wood steps	1	LS	-	-	3,500	3,500	4
Replace storm windows	7	EA	1,050	1,050	-	2,100	2
Restore original window	7	EA	-	3,500	-	3,500	4
Subtotal Cost			1,050	4,550	11,500	17,100	
Subcontractor Markups			108	469	1,185	1,761	
GC Markup			782	6,303		7,085	
Total						25,946	
Exterior Total						**525,130**	

Interior Scope

Basement	QTY	Unit	Material	Labor	Sub Cost	TOTAL	Priority
Repair or replace existing windows	9	EA	2,362	592	-	2,954	4
New fireplace fittings	1	LS	1,050	504	-	1,554	4
Fire rated ceiling	1614	SF	4,800	8,000	-	12,800	1
Fire rated door	2	EA	1,500	500	-	2,000	1
Cast iron grille 4x2	1	EA	735	130	-	865	4
Subtotal Cost			10,447	9,726	-	20,173	
Subcontractor Markups			1,076	1,002	-	2,078	
GC Markup			7,778	13,474		21,252	
Total						43,503	
First Floor							
Restore window & shutters	6	EA	-	6,000	-	6,000	4
Restore hardware	4	EA	900	600	-	1,500	4
Restore original finishes	2863	SF	-	-	28,343	28,343	4
Restore plaster	320	SF	550	1,600	-	2,150	4
Remove, restore, reinstall antique lantern	1	EA	100	200	-	300	4
Remove wall layering & restore to original	2880	SF	2,160	-	-	2,160	4
Restore jib door & frame	3	EA	-	-	3,938	3,938	4
Restore floor finish	1994	SF	1,200	4,500	-	5,700	4
Refurbish all surfaces to high standards	2863	SF	-	-	28,343	28,343	4
Remove existing wall & ceiling surfaces to research	320	SF	-	1,600	-	1,600	4
Reinforce existing handrail	1	LS	4,000	4,000	-	8,000	4
Provide new bathroom	1	LS	-	-	6,000	6,000	2
Reconfigure ADA bathroom	1	LS	-	-	10,000	10,000	1
Remove and replace plaster ceiling	1600	SF	4,500	9,000	-	13,500	1
Catering kitchen upgrade	1	LS	-	-	50,000	50,000	3
Subtotal Cost			13,410	27,500	126,624	167,534	
Subcontractor Markups			1,381	2,833	13,042	17,256	
GC Markup			9,984	38,098		48,082	
Total						232,871	
Second Floor							
Restore window & shutters	11	EA	-	11,000	-	11,000	4
Restore original finishes	1994	SF	-	-	19,740	19,740	4
Restore plaster	1994	SF	3,290	9,870	-	13,160	4
Restore floor finish	1994	SF	1,200	4,500	-	5,700	4
Restore wall and trim	320	LF	4,224	2,112	-	6,336	4
Restore hardware	4	EA	900	600	-	1,500	4
Remove excessive paint at mouldings	640	LF	4,416	18,400	-	22,816	4
Reverse south door to original swing	1	EA	300	130	-	430	4
Restore jib door & frame	4	EA	-	-	5,251	5,251	4
Restore south partition to original line	120	SF	1,260	2,520	-	3,780	4
Restore original crown moulding	320	LF	5,520	1,840	-	7,360	4
Reset door & frame at original plane	1	EA	100	100	-	200	4
Remove dressing room completely	2	LS	-	2,016	-	2,016	2
Remove bath room completely	1	LS	-	1,512	-	1,512	2
Restore original window at west wall	1	EA	700	700	-	1,400	4
Reinforce floor	1600	SF	9,600	8,000	-	17,600	1
Remove and replace plaster ceiling	960	SF	2,700	5,400	-	8,100	1
Subtotal Cost			34,210	68,700	24,991	127,901	
Subcontractor Markups			3,524	7,076	2,574	13,174	
GC Markup			25,470	95,175		120,645	
Total						261,720	
Third Floor							
Restore semi-circular window	1	EA	3,000	2,000	-	5,000	4
Restore hardware	3	EA	675	450	-	1,125	4
Restore wall & trim	600	LF	3,600	1,350	-	4,950	4
Reinstall door	1	EA	-	100	-	100	4
Replace plaster	150	SF	250	800	-	1,050	4
Replace chairrail & base	102	LF	590	215	-	805	4
Restore existing casements	3	EA	2,400	200	-	2,600	4
Remove paint on window & trim	3	EA	100	400	-	500	4
Remove and replace light	3	EA	210	100	-	310	4
Reinforce floor	960	SF	5,760	4,800	-	10,560	1
Subtotal Cost			16,585	10,415	-	27,000	
Subcontractor Markups			1,708	1,073	-	2,781	
GC Markup			12,348	14,429		26,777	
Total						56,558	
Interior Total						**594,651**	

Plumbing, Mechanical, and Electrical Scope

Plumbing	QTY	Unit	Material	Labor	Sub Cost	TOTAL	Priority
Demo existing fixtures and piping	17	EA	-	2,231	-	2,231	2
Supply & waste riser: remove & cap	1	LS	55	510	-	565	2
New supply & waste riser	1	LS	300	510	-	810	2
Reroute condensate line	1	EA	100	200	-	300	2
Piping	16	EA	4,956	6,888	-	11,844	2
Plumbing fixture & rough-in	16	EA	5,880	1,848	-	7,728	2
Wall hydrant	4	EA	315	210	-	525	2
40 GAL water heater	1	EA	635	158	-	793	2
Subtotal Cost			12,241	12,555	-	24,796	
Subcontractor Markups			1,261	1,293	-	2,554	
GC Markup			9,114	17,393		26,507	
Total						53,857	
HVAC							
Ductwork	8103	SF	26,715	18,888	-	45,603	3
Insulation	8103	SF	4,680	2,127	-	6,807	3
Inspect & seal off chimney opening	6	EA	630	378	-	1,008	3
Controls	3	EA	331	315	-	646	3
Remove & replace toilet exhaust fans	3	EA	346	394	-	740	3
Air-air heat pump (5 ton)	2	EA	7,350	2,100	-	9,450	3
Air-air heat pump (2 ton)	1	EA	2,205	1,100	-	3,305	3
Demo AHU & piping	2	EA	-	1,785	-	1,785	3
Demo boiler	1	EA	-	446	-	446	3
Demo pumps	2	EA	-	294	-	294	3
Demo fuel line & cap tank	1	LS	110	525	-	635	3
Subtotal Cost			42,367	28,352	-	70,719	
Subcontractor Markups			4,364	2,920	-	7,284	
GC Markup			31,543	39,278		70,821	
Total						148,824	
Electrical							
Elevator electrical components	1	EA	600	400	-	1,000	1
Panelboard (400A)	1	EA	2,730	945	-	3,675	1
Disconnect switches at mechanical units	7	EA	404	1,102	-	1,506	1
Panelboard (200A)	1	EA	966	430	-	1,396	1
400A feeder	100	LF	5,670	2,940	-	8,610	1
200A feeder	100	LF	2,940	1,575	-	4,515	1
Receptacles 2W/SF	8103	SF	5,530	11,656	-	17,186	1
Circuits (20A)	40	EA	2,352	5,292	-	7,644	1
Lighting 1.6W/SF	8103	SF	15,996	18,122	-	34,118	1
Lighting switches	8103	SF	2,382	4,935	-	7,317	1
Lighting circuits	40	EA	2,352	5,292	-	7,644	1
Subtotal Cost			41,922	52,689	-	94,611	
Subcontractor Markups			4,318	5,427	-	9,745	
GC Markup			31,212	72,994		104,206	
Total						208,562	
Fire Alarm							
Remove existing fire alarm system	1	LS	-	504	-	504	1
Current code fire alarm system	8103	SF	2,200	2,600	-	4,800	1
Subtotal Cost			2,200	3,104	-	5,304	
Subcontractor Markups			227	320	-	546	
GC Markup			1,638	4,300		5,938	
Total						11,788	
Voice/Data							
Remove existing phone system	1	LS	-	550	-	550	3
New wireless intercom system	1	LS	525	510	-	1,035	3
Voice/Data outlet	6	EA	1,200	900	-	2,100	3
Subtotal Cost			1,725	1,960	-	3,685	
Subcontractor Markups			178	202	-	380	
GC Markup			1,284	2,715		4,000	
Total						8,064	
PME Total						**431,096**	

Removal Scope

Removals	QTY	Unit	Material	Labor	Sub Cost	TOTAL	Priority
Remove drywall door closure	80	SF	-	400	-	400	4
Remove existing finishes in closet	1	LS	-	480	-	480	4
Remove ceiling plaster	25	SF	-	75	-	75	4
Remove closer at first floor bathroom	1	LS	-	480	-	480	4
Remove finishes at second floor bathroom	1	LS	-	120	-	120	2
Remove second floor wood flooring	100	SF	-	350	-	350	4
Remove third floor wood flooring	100	SF	-	350	-	350	4
Subtotal Cost			-	2,255	-	2,255	
Subcontractor Markups			-	232	-	232	
GC Markup			-	3,124		3,124	
Total						5,611	
Removals Total						**5,611**	

Cost Categorization

The costs proposed in the previous report and revised in this report do not fall cleanly into the categories of *code required* or *tax credit approved historic rehabilitation*. It may be more useful to assign priorities beginning with minimum code and building envelope requirements and ending with full historic rehabilitation.

In the sections below we have manipulated the spreadsheet to categorize costs. If divided into distinct scopes of work or separate contracts some components may not scale correctly. These areas of question include but are not limited to general labor, contractor profit, professional fees, and contingency.

It is the intent that none of the higher priority work would jeopardize the historic nature of the facility or the ability to pursue a tax credit approved historic rehabilitation. All of the work described in this report is eligible for credit, therefore the applications should be started before any work on site is begun.

A table that summarizes the costs for the potential priority options follows.

Priority 1: Minimum Code and Building Envelope Requirements

The first priority will be to satisfy the basic minimum code requirements and improve the building envelope enough to avoid further deterioration. Most significantly this includes the entire electrical and fire alarm scope of work. It also includes roof repair, brick repointing, floor reinforcement, and an accessible restroom.

The projected cost for this scope of work is approximately $794,957.

Priority 2: Increased Accessibility and Building Envelope Improvements

The second priority should be to increase the accessibility in the event of public use of the building. The single largest component to this scope is the addition of a small commercial elevator within the extents of the east porch. Allowing access from the first floor to the second floor reaches the most historically significant spaces within the house. While more expensive than a chair lift or residential elevator, a commercial elevator would allow regular use without increased maintenance.

Also included in this scope of work are replacement of basement windows, repair to the protective bars at basement windows, and storm windows over each existing window. While not absolutely necessary, and therefore not in Priority 1, they would greatly improve the safety, security, and efficiency of the facility.

The projected cost for this scope of work is approximately $315,290.

Priority 3: Replacement Building Systems

Third priority may be to replace the remaining building systems. There are existing, modern HVAC and voice/data systems in the building. While operational and relatively new, replacement systems would be more efficient and provide higher levels of service and comfort for future occupants.

Also included in this scope of work is an allowance for upgrading the kitchen to a catering kitchen. It is anticipated that this space is used for warming and staging food prepared elsewhere by a caterer rather than a kitchen for cooking on-site. Preparing food on-site requires a full commercial kitchen, which will be considerably more expensive and perhaps difficult to accommodate in this historic structure.

The projected cost for this scope of work is approximately $318,816.

Priority 4: Tax Credit Historic Rehabilitation

The previous priorities do not include any amounts for purely aesthetic improvements that may be necessary for tenant occupation. All work should be carefully considered in order to preserve the capability for future tax credit approval. Therefore, any purely aesthetic improvements such as painting the walls quickly relate to historic rehabilitation. As such, it was decided to retain all like work in this scope.

This scope itself can and should be prioritized when the time is right. Some aspects are more historically significant and more easily appreciated by building tenants or touring public.

There are also individual items that are questionable or unique enough that it is difficult to predict what the Department of Historic Resources will say. For the purposes of this report, we have made some assumptions about future interpretations.

The projected cost for this scope of work is approximately $840,805.

Allowances

The allowances for archeological exploration or site work have not been included in any of the scopes above.

Cost Categorization

Construction Cost	Priority 1	Priority 2	Priority 3	Priority 4
Materials + Markup	208,774	33,146	81,461	129,779
Labor + Markup	308,948	57,862	75,427	294,284
Sub Cost + Markup	27,949	116,918	55,150	155,591
Construction Cost Subtotal	545,671	207,926	212,038	579,655
GC Overhead and Profit (12%)	65,481	24,951	25,445	69,559
Construction Cost Total	611,152	232,878	237,483	649,213
Fees & Miscellany				
Tax Credit Preparation Fees (estimate)	15,000	15,000	15,000	15,000
Professional Design Fees (10%)	61,115	23,288	23,748	64,921
Reimbursables (estimate)	1,000	1,000	1,000	1,000
Structural Special Inspections (estimate)	3,000	2,000		1,000
Contingency & Total				
Project Cost Subtotal	691,267	274,165	277,231	731,134
Project Contingency (15%)	103,690	41,125	41,585	109,670
Total Cost per Scope	**794,957**	**315,290**	**318,816**	**840,805**

Appendix A:
Preservation Brief #31: Mothballing Historic Buildings

31 PRESERVATION BRIEFS

Mothballing Historic Buildings

Sharon C. Park, AIA

U.S. Department of the Interior
National Park Service
Cultural Resources

Heritage Preservation Services

When all means of finding a productive use for a historic building have been exhausted or when funds are not currently available to put a deteriorating structure into a useable condition, it may be necessary to close up the building temporarily to protect it from the weather as well as to secure it from vandalism. This process, known as mothballing, can be a necessary and effective means of protecting the building while planning the property's future, or raising money for a preservation, rehabilitation or restoration project. If a vacant property has been declared unsafe by building officials, stabilization and mothballing may be the only way to protect it from demolition.

This Preservation Brief focuses on the steps needed to "de-activate" a property for an extended period of time. The project team will usually consist of an architect, historian, preservation specialist, sometimes a structural engineer, and a contractor. Mothballing should not be done without careful planning to ensure that needed physical repairs are made prior to securing the building. The steps discussed in this Brief can protect buildings for periods of up to ten years; long-term success will also depend on continued, although somewhat limited, monitoring and maintenance. For all but the simplest projects, hiring a team of preservation specialists is recommended to assess the specific needs of the structure and to develop an effective mothballing program.

A vacant historic building cannot survive indefinitely in a boarded-up condition, and so even marginal interim uses where there is regular activity and monitoring, such as a caretaker residence or non-flammable storage, are generally preferable to mothballing. In a few limited cases when the vacant building is in good condition and in a location where it can be watched and checked regularly, closing and locking the door, setting heat levels at just above freezing, and securing the windows may provide sufficient protection for a period of a few years. But if long-term mothballing is the only remaining option, it must be done properly (see fig. 1 & 2). This will require stabilization of the exterior, properly designed security protection, generally some form of interior ventilation - either through mechanical or natural air exchange systems - and continued maintenance and surveillance monitoring.

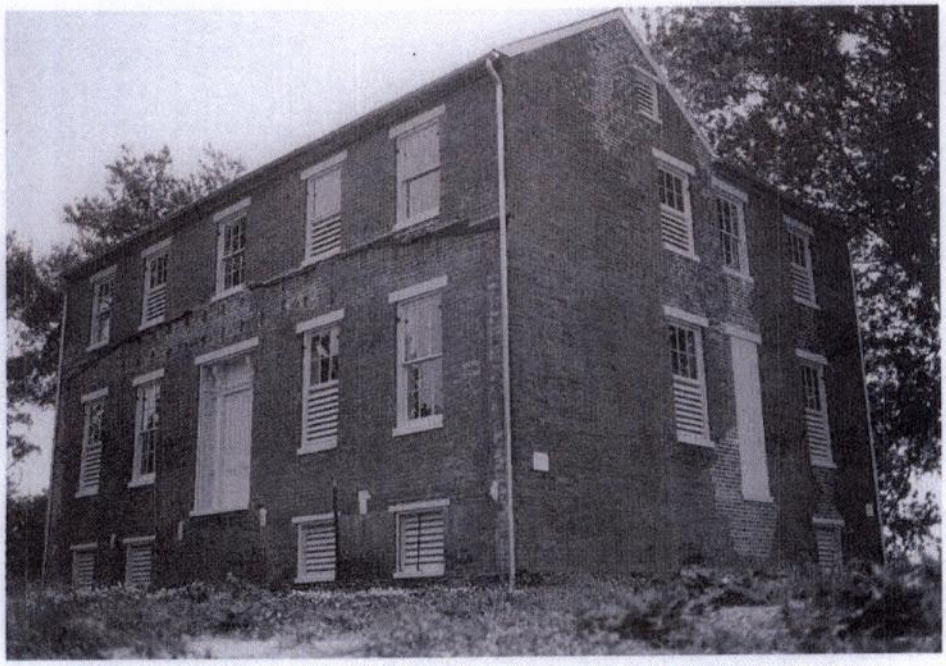


Figure 1. Proper mothballing treatment: This building has been successfully mothballed for 10 years because the roof and walls were repaired and structurally stabilized, ventilation louvers were added, and the property is maintained. Photo: Charles E. Fisher, NPS.

Comprehensive mothballing programs are generally expensive and may cost 10% or more of a modest rehabilitation budget. However, the money spent on well-planned protective measures will seem small when amortized over the life of the resource. Regardless of the location and condition of the property or the funding available, the following 9 steps are involved in properly mothballing a building:

Figure 2. Improper treatment: Boarding up without adequate ventilation, lack of maintenance, and neglect of this property have accelerated deterioration. Photo; NPS file.

Documentation

1. Document the architectural and historical significance of the building.

2. Prepare a condition assessment of the building.

Stabilization

3. Structurally stabilize the building, based on a professional condition assessment.

4. Exterminate or control pests, including termites and rodents.

5. Protect the exterior from moisture penetration.

Mothballing

6. Secure the building and its component features to reduce vandalism or break-ins.

7. Provide adequate ventilation to the interior.

8. Secure or modify utilities and mechanical systems.

9. Develop and implement a maintenance and monitoring plan for protection.

These steps will be discussed in sequence below. Documentation and stabilization are critical components of the process and should not be skipped over. Mothballing measures should not result in permanent damage, and so each treatment should be weighed in terms of its reversibility and its overall benefit.

Documentation

Documenting the historical significance and physical condition of the property will provide information necessary for setting priorities and allocating funds. The project team should be cautious when first entering the structure if it has been vacant or is deteriorated. It may be advisable to shore temporarily areas appearing to be structurally unsound until the condition of the structure can be fully assessed (see fig. 3). If pigeon or bat droppings, friable asbestos or other health hazards are present, precautions must be taken to wear the appropriate safety equipment when first inspecting the building. Consideration should be given to hiring a firm specializing in hazardous waste removal if these highly toxic elements are found in the building.

Documenting and recording the building. Documenting a building's history is important because evidence of its true age and architectural significance may not be readily evident. The owner should check with the State Historic Preservation Office or local preservation commission for assistance in researching the building. If the building has never been researched for listing in the National Register of Historic Places or other historic registers, then, at a minimum, the following should be determined:

- The overall historical significance of the property and dates of construction;
- the chronology of alterations or additions and their approximate dates; and,
- types of building materials, construction techniques, and any unusual detailing or regional variations of craftsmanship.

Old photographs can be helpful in identifying early or original features that might be hidden under modern materials. On a walk-through, the architect, historian, or preservation specialist should identify the architecturally significant elements of the building, both inside and out (see fig.4).

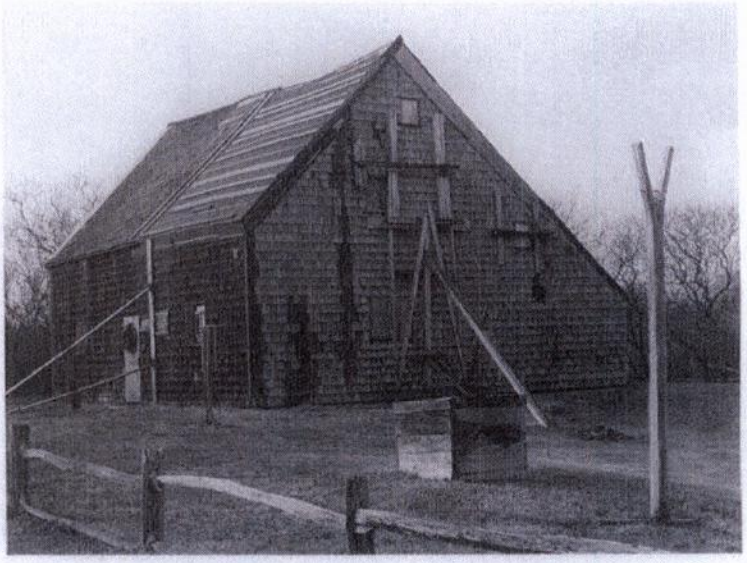


Figure 3. Buildings seriously damaged by storms or deterioration may need to be braced before architectural evaluations can be made. Jethro Coffin House. Photo: John Milner Architects.

Figure 4. Documenting the building's history, preparing schematic plans, and assessing the condition of the building will provide necessary information on which to set priorities for stabilization and repair prior to securing the building. Photo: Frederick Lindstrom, HABS.

By understanding the history of the resource, significant elements, even though deteriorated, may be spared the trash pile. For that reason alone, any materials removed from the building or site as part of the stabilization effort should be carefully scrutinized and, if appearing historic, should be photographed, tagged with a number, inventioried, and safely stored, preferably in the building, for later retrieval (see fig. 5).

A site plan and schematic building floor plans can be used to note important information for use when the building is eventually preserved, restored, or rehabilitated. Each room should be given a number and notations added to the plans regarding the removal of important features to storage or recording physical treatments undertaken as part of the stabilization or repair.

Because a mothballing project may extend over a long period of time, with many different people involved, clear records should be kept and a building file established. Copies of all important data, plans, photographs, and lists of consultants or contractors who have worked on the property should be added to the file as the job progresses.

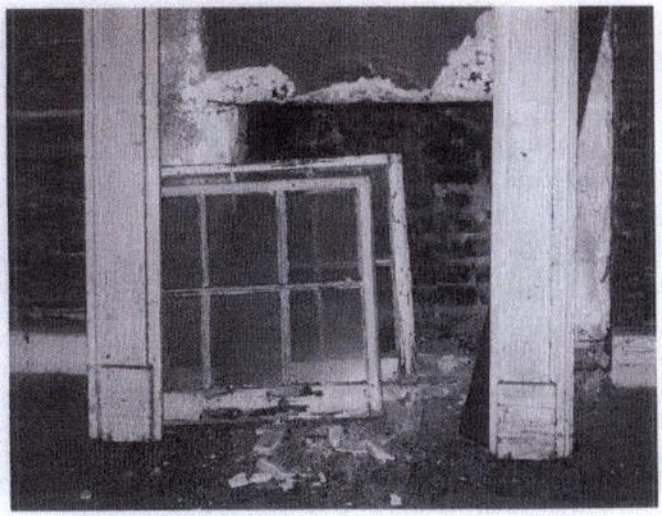


Figure 5. Loose or detached elements should be identified, tagged and stored, preferably on site. Photo: NPS files.

Recording all actions taken on the building will be helpful in the future.

The project coordinator should keep the building file updated and give duplicate copies to the owner. A list of emergency numbers, including the number of the key holder, should be kept at the entrance to the building or on a security gate, in a transparent vinyl sleeve.

Preparing a condition assessment of the building. A condition assessment can provide the owner with an accurate overview of the current condition of the property. If the building is deteriorated or if there are significant interior architectural elements that will need special protection during the mothballing years, undertaking a condition assessment is highly recommended, but it need not be exhaustive.

A modified condition assessment, prepared by an architect or preservation specialist, and in some case a structural engineer, will help set priorities for repairs necessary to stabilize the property for both the short and long-term. It will evaluate the age and condition of the following major elements: foundations; structural systems; exterior materials; roofs and gutters; exterior porches and steps; interior finishes; staircases; plumbing, electrical, mechanical systems; special features such as chimneys; and site drainage.

To record existing conditions of the building and site, it will be necessary to clean debris from the building and to remove unwanted or overgrown vegetation to expose foundations. The interior should be emptied of its furnishing (unless provisions are made for mothballing these as well), all debris removed, and the interior swept with a broom. Building materials too deteriorated to repair, or which have come detached, such as moldings, balusters, and decorative plaster, and which can be used to guide later preservation work, should be tagged, labeled and saved.

Photographs or a videotape of the exterior and all interior spaces of the resource will provide an invaluable record of "as is" conditions. If a videotape is made, oral commentary can be provided on the significance of each space and architectural feature. If 35mm photographic prints or slides are made, they should be numbered, dated, and appropriately identified. Photographs should be cross-referenced with the room numbers on the schematic plans. A systematic method for photographing should be developed; for example, photograph each wall in a room and then take a corner shot to get floor and ceiling portions in the picture. Photograph any unusual details as well as examples of each window and door type.

For historic buildings, the great advantage of a condition assessment is that architectural features, both on the exterior as well as the interior, can be rated on a scale of their importance to the integrity and significance of the building. Those features of the highest priority should receive preference when repairs or protection measures are outlined as part of the mothballing process. Potential problems with protecting these features should be identified so that appropriate interim solutions can be selected. For example, if a building has always been heated and if murals, decorative plaster walls, or examples of patterned wall paper are identified as highly significant, then special care should be taken to regulate the interior climate and to monitor it adequately during the

mothballing years. This might require retaining electrical service to provide minimal heat in winter, fan exhaust in summer, and humidity controls for the interior.

Stabilization

Stabilization as part of a mothballing project involves correcting deficiencies to slow down the deterioration of the building while it is vacant. Weakened structural members that might fail altogether in the forthcoming years must be braced or reinforced; insects and other pests removed and discouraged from returning; and the building protected from moisture damage both by weatherizing the exterior envelope and by handling water run-off on the site. Even if a modified use or caretaker services can eventually be found for the building, the following steps should be addressed.

Structurally stabilizing the building. While bracing may have been required to make the building temporarily safe for inspection, the condition assessment may reveal areas of hidden structural damage. Roofs, foundations, walls, interior framing, porches and dormers all have structural components that may need added reinforcement. Structural stabilization by a qualified contractor should be done under the direction of a structural engineer or a preservation specialist to ensure that the added weight of the reinforcement can be sustained by the building and that the new members do not harm historic finishes (see fig. 6). Any major vertical post added during the stabilization should be properly supported and, if necessary, taken to the ground and underpinned.

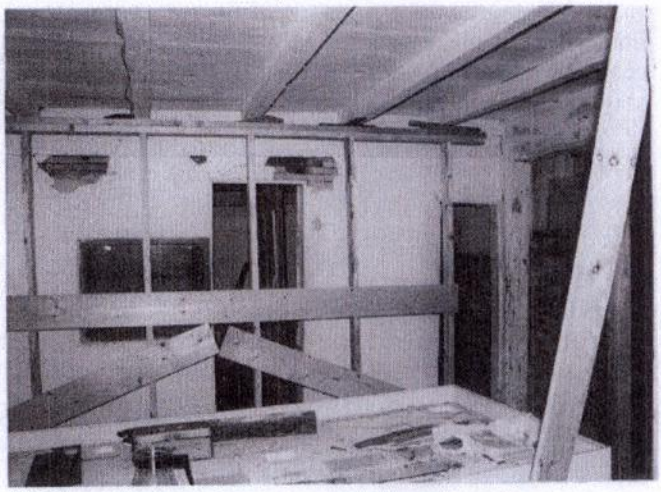


Figure 6. Interior bracing which will last the duration of the mothballing will protect weakened structural members. Jethro Coffin House. Photo: John Milner Architects.

If the building is in a northern climate, then the roof framing must be able to hold substantial snow loads. Bracing the roof at the ridge and mid-points should be considered if sagging is apparent. Likewise, interior framing around stair openings or under long ceiling spans should be investigated. Underpinning or bracing structural piers weakened by poor drainage patterns may be a good precaution as well. Damage caused by insects, moisture, or from other causes should be repaired or reinforced and, if possible, the source of the damage removed. If features such as porches and dormers are so severely deteriorated that they must be removed, they should be documented, photographed, and portions salvaged for storage prior to removal.

If the building is in a southern or humid climate and termites or other insects are a particular problem, the foundation and floor framing should be inspected to ensure that there are no major structural weaknesses. This can usually be done by observation from the crawl space or basement. For those structures where this is not possible, it may be advisable to lift selective floor boards to expose the floor framing. If there is evidence of pest damage, particularly termites, active colonies should be treated and the structural members reinforced or replaced, if necessary.

Controlling pests. Pests can be numerous and include squirrels, raccoons, bats, mice, rats, snakes, termites, moths, beetles, ants, bees and wasps, pigeons, and other birds. Termites, beetles, and carpenter ants destroy wood. Mice, too, gnaw wood as well as plaster, insulation, and electrical wires. Pigeon and bat droppings not only damage wood finishes but create a serious and sometimes deadly health hazard.

If the property is infested with animals or insects, it is important to get them out and to seal off their access to the building. If necessary, exterminate and remove any nests or hatching colonies. Chimney flues may be closed off with exterior grade plywood caps, properly ventilated, or protected with framed wire screens. Existing vents, grills, and louvers in attics and crawl spaces should be screened with bug mesh or heavy duty wire, depending on the type of pest being controlled. It may be advantageous to have damp or infected wood treated with insecticides (as permitted by each state) or preservatives, such as borate, to slow the rate of deterioration during the time that the building is not in use.

Securing the exterior envelope from moisture penetration. It is important to protect the exterior envelope from moisture penetration before securing the building. Leaks from deteriorated or damaged roofing, from around windows and doors, or through deteriorated materials, as well as ground moisture from improper site run-off or rising damp at foundations, can cause long-term damage to interior finishes and structural systems. Any serious deficiencies on the exterior, identified in the condition assessment, should be addressed.

To the greatest extent possible, these weatherization efforts should not harm historic materials. The project budget may not allow deteriorated features to be fully repaired or replaced in-kind. Non-historic or modern materials may be used to cover historic surfaces temporarily, but these treatments should not destroy valuable evidence necessary for future preservation work. Temporary modifications should be as visually compatible as possible with the historic building.

Roofs are often the most vulnerable elements on the building exterior and yet in some ways they are the easiest element to stabilize for the long term, if done correctly. "Quick fix" solutions, such as tar patches on slate roofs, should be avoided as they will generally fail within a year or so and may accelerate damage by trapping moisture. They are difficult to undo later when more permanent repairs are undertaken. Use of a tarpaulin over a leaking roof should be thought of only as a very temporary

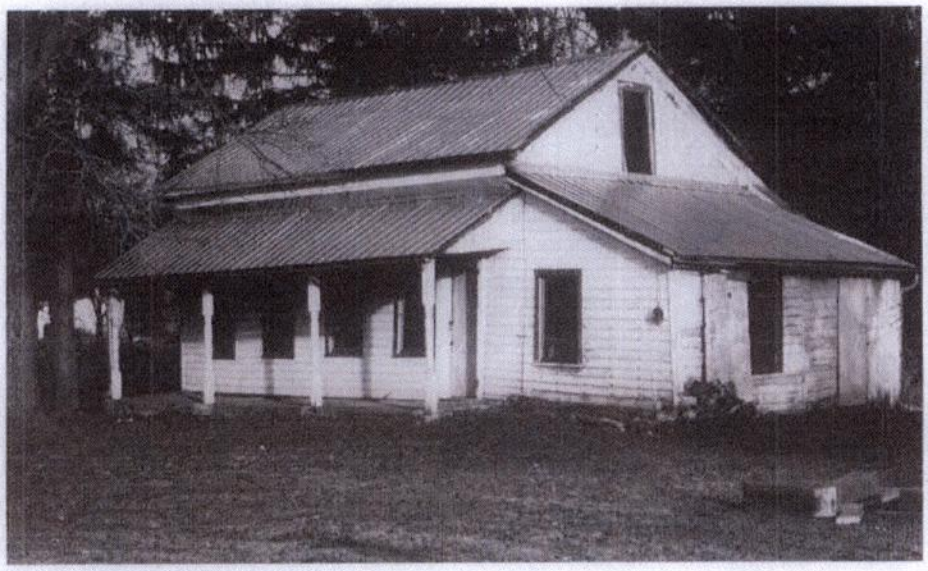


Figure 7. Non-historic materials are appropriate for mothballing projects when they are used to protect historic evidence remaining for future preservation. This lightweight aluminum channel frame and roofing covers the historic wooden shingle roof. Galvanized mesh panels secure the window openings from intrusion by raccoons and other unwanted guests. Photo: Williamsport Preservation Training Center, NPS.

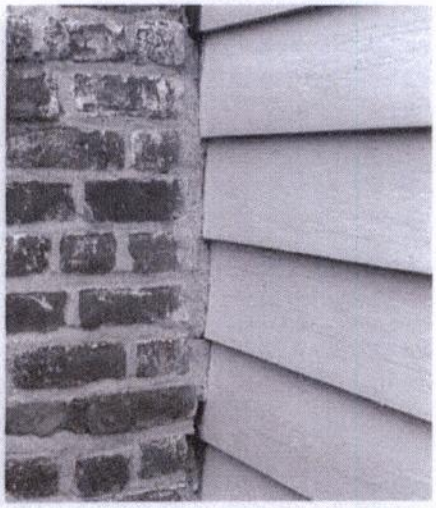


Figure 8. Appropriate mortar mixes should be used when masonry repairs are undertaken. In this case, a soft lime based mortar is used as an infill between the brick and wooden elements. When full repairs are made during the restoration phase, this soft mortar can easily be removed and missing bricks replaced.

emergency repair because it is often blown off by the wind in a subsequent storm.

If the existing historic roof needs moderate repairs to make it last an additional ten years, then these repairs should be undertaken as a first priority. Replacing cracked or missing shingles and tiles, securing loose flashing, and reanchoring gutters and downspouts can often be done by a local roofing contractor. If the roof is in poor condition, but the historic materials and configuration are important, a new temporary roof, such as a lightweight aluminum channel system over the existing, might be considered (see fig. 7). If the roofing is so deteriorated that it must be replaced and a lightweight aluminum system is not affordable, various inexpensive options might be considered. These include covering the existing deteriorated roof with galvanized corrugated metal roofing panels, or 90 lb. rolled roofing, or a rubberized membrane (refer back to cover photo). These alternatives should leave as much of the historic sheathing and roofing in place as evidence for later preservation treatments.

For masonry repairs, appropriate preservation approaches are essential. For example, if repointing deteriorated brick chimneys or walls is necessary to prevent serious moisture penetration while the building is mothballed, the mortar should match the historic mortar in composition, color, and tooling. The use of hard portland cement mortars or vapor-impermeable waterproof coatings are not appropriate solutions as they can cause extensive damage and are not reversible treatments (see fig. 8).

For wood siding that is deteriorated, repairs necessary to keep out moisture should be made; repainting is generally warranted. Cracks around windows and doors can be beneficial in providing ventilation to the interior and so should only be caulked if needed to keep out bugs and moisture. For very deteriorated wall surfaces on wooden frame structures, it may be necessary to sheathe in plywood panels, but care should be taken to minimize installation damage by planning the location of the nailing or screw patterns or by installing panels over a frame of battens (see fig. 9). Generally, however, it is better to repair deteriorated features than to cover them over.

Foundation damage may occur if water does not drain away from the building. Run-off from gutters and downspouts should be directed far away from the foundation wall by using long flexible extender pipes equal in length to twice the depth of the basement or crawl space. If underground drains are susceptible to clogging, it is recommended that the downspouts be disconnected from the drain boot and attached to flexible piping. If gutters and downspouts are in bad condition, replace them with inexpensive aluminum units.

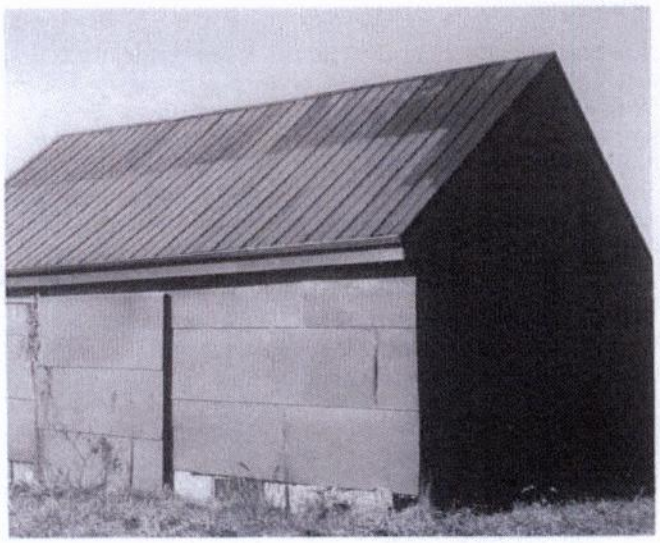


Figure 9. Severely deteriorated wooden siding on a farm building has been covered over with painted plywood panels as a temporary measure to eliminate moisture penetration to the interior. Foundation vents and loose floor boards allow air to circulate inside.

If there are no significant landscape or exposed archeological elements around the foundation, consideration should be given to regrading the site if there is a documented drainage problem (see fig. 10). If building up the grade, use a fiber mesh membrane to separate the new soil from the old and slope the new soil 6 to 8 feet (200 cm-266 cm) away from the foundation making sure not to cover up the dampcourse layer or come into contact with skirting boards. To keep vegetation under control, put down a layer of 6 mil black polyethylene sheeting or fiber mesh matting covered with a 2"-4" (5-10 cm.) of washed gravel. If the building suffers a serious rising damp problem, it may be advisable to eliminate the plastic sheeting to avoid trapping ground moisture against foundations.

Figure 10. Regrading around the Booker Tenement at Colonial Williamsburg has protected the masonary foundation wall from excessive damp. This building has been successfully mothballed for over 10 years. Note the attic and basement vents, the temporary stairs, and the informative sign interpreting the history of this building.

Mothballing

The actual mothballing effort involves controlling the long-term deterioration of the building while it is unoccupied as well as finding methods to protect it from sudden loss by fire or vandalism. This requires securing the building from unwanted entry, providing adequate ventilation to the interior, and shutting down or modifying existing utilities. Once the building is de-activated or secured, the long-term success will depend on periodic maintenance and surveillance monitoring.

Securing the building from vandals, break-ins, and natural disasters. Securing the building from sudden loss is a critical aspect of mothballing. Because historic buildings are irreplaceable, it is vital that vulnerable entry points are sealed. If the building is located where fire and security service is available then it is highly recommeded that some form of monitoring or alarm devices be used.

To protect decorative features, such as mantels, lighting fixtures, copper downspouts, iron roof cresting, or stained glass windows from theft or vandalism, it may be advisable to temporarily remove them to a more secure location if they cannot be adequately protected within the structure.

Mothballed buildings are usually boarded up, particularly on the first floor and basement, to protect fragile glass windows from breaking and to reinforce entry points (see fig. 11). Infill materials for closing door and window openings include plywood, corrugated panels, metal grates, chain fencing, metal grills, and cinder or cement blocks (see fig. 12). The method of installation should not result in the destruction of the opening and all associated sash, doors, and frames should be protected or stored for future reuse.

Figure 11. Urban buildings often need additional protection from unwanted entry and graffiti. This commercial building uses painted plywood panels to cover expansive glass storefronts and chain link fencing is applied on top of the panels. The upper windows on the street sides have been covered and painted to resemble 19th century sash. Photo: Thomas Jester, NPS.

Generally exterior doors are reinforced and provided with strong locks, but if weak historic doors would be damaged or disfigured by adding reinforcement or new locks, they may be removed temporarily and replaced with secure modern doors (see fig. 13). Alternatively, security gates in a new metal frame can be installed within existing door openings, much like a storm door, leaving the historic door in place. If plywood panels are installed over door openings, they should be screwed in place, as opposed to nailed, to avoid crowbar damage each time the panel is removed. This also reduces pounding vibrations from hammers and eliminates new nail holes each time the panel is replaced.

For windows, the most common security feature is the closure of the openings; this may be achieved with wooden or pre-formed panels or, as needed, with metal sheets or concrete blocks. Plywood panels, properly installed to protect wooden frames and properly ventilated, are the preferred treatment from a preservation standpoint.

There are a number of ways to set insert plywood panels into windows openings to avoid damage to frame and sash (see fig. 14). One common method is to bring the upper and lower sash of a double hung unit to the mid-point of the opening and then to install pre-cut plywood panels using long carriage bolts anchored into horizontal wooden bracing, or strong backs, on the inside face of the window. Another means is to build new wooden blocking frames set into deeply recessed openings, for example in an industrial mill or warehouse, and then to affix the plywood panel to

the blocking frame. If sash must be removed prior to installing panels, they should be labeled and stored safely within the building.

Plywood panels are usually 1/2"-3/4" (1.25-1.875 cm.) thick and made of exterior grade stock, such as CDX, or marine grade plywood. They should be painted to protect them from delamination and to provide a neater appearance. These panels may be painted to resemble operable windows or treated decoratively (see fig. 15). With extra attention to detail, the plywood panels can be

Figure 12. First floor openings have been filled with cinderblocks and doors, window sash and frames have been removed for safe keeping. Note the security light over the windows and the use of a security metal door with heavy duty locks. Photo: H. Ward Jandl, NPS.

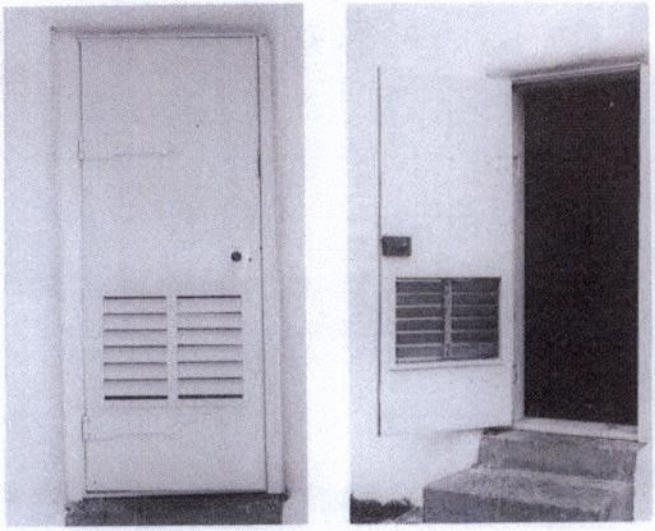


Figure 13. If historic doors would be damaged by adding extra locks, they should be removed and stored and new security doors added. At this lighthouse, the historic door has been replaced with a new door (seen both inside and outside) with an inset vent and new deadbolt locks. The heavy historic hinges have not been damaged. Photo: Williamsport Preservation Training Center, NPS.

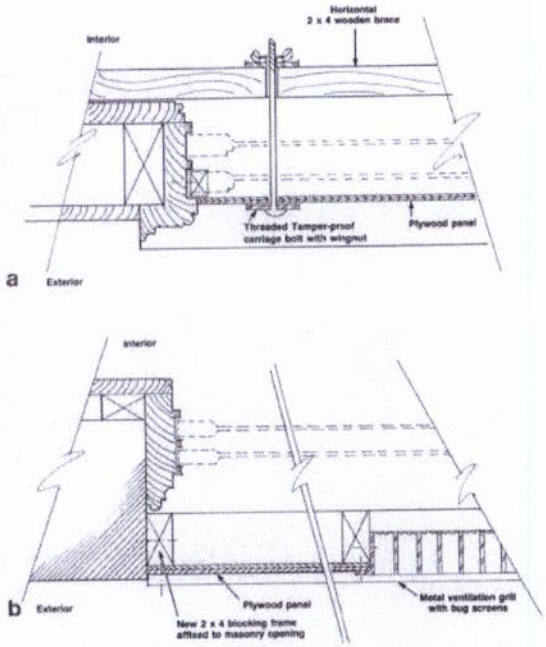


Figure 14. A: Plan detail showing plywood security panel anchored with carriage bolts through to the inside horizontal bracing, or strong backs. B: Plan detail showing section of plywood window panel attached to a new pressure treated wood frame set within the masonry opening. Ventilation should be included whenever possible or necessary.

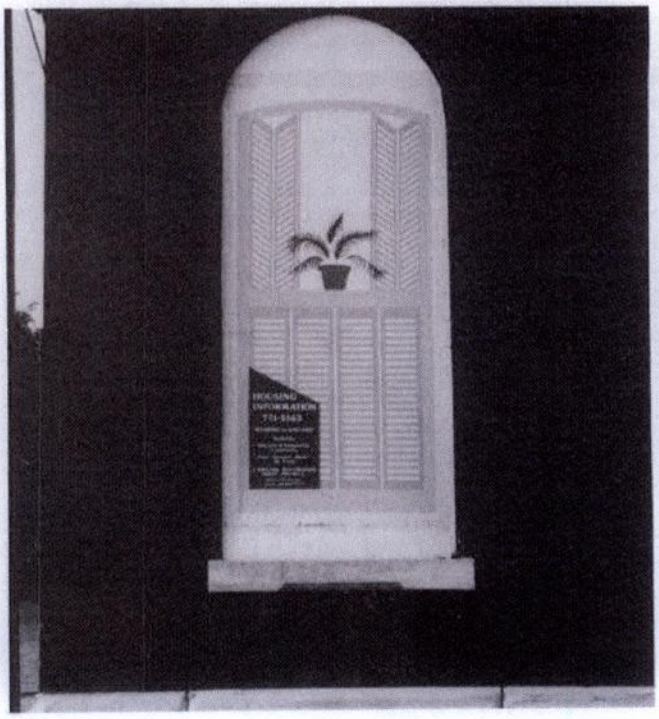


Figure 15. Painting trompe l'oeil scenes on plywood panels is a neighborhood friendly device. In addition, the small sign at the bottom left corner gives information for contacting the organization responsible for the care of the mothballed building. Photo: Lee H. Nelson, FAIA.

trimmed out with muntin strips to give a shadow line simulating multi-lite windows. This level of detail is a good indication that the building is protected and valued by the owner and the community.

If the building has shutters, simply close the shutters and secure them from the interior (see fig. 16). If the building had shutters historically, but they are missing, it may be appropriate to install new shutters, even in a modern material, and secure them in the closed position. Louvered shutters will help with interior ventilation if the sash are propped open behind the shutters.

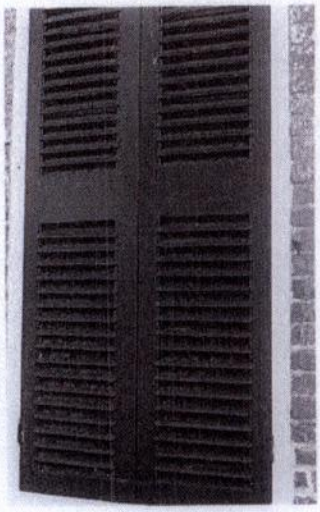


Figure 16. Historic louvered shutters make excellent security closures with passive ventilation.

There is some benefit from keeping windows unboarded if security is not a problem. The building will appear to be occupied, and the natural air leakage around the windows will assist in ventilating the interior. The presence of natural light will also help when periodic inspections are made. Rigid polycarbonate clear storm glazing panels may be placed on the window exterior to protect against glass breakage. Because the sun's ultraviolet rays can cause fading of floor finishes and wall surfaces, filtering pull shades or inexpensive curtains may be options for reducing this type of deterioration for significant interiors. Some acrylic sheeting comes with built-in ultraviolet filters.

Securing the building from catastrophic destruction from fire, lightning, or arson will require additional security devices. Lightning rods properly grounded should be a first consideration if the building is in an area susceptible to lightning storms. A high security fence should also be installed if the property cannot be monitored closely. These interventions do not require a power source for operation. Since many buildings will not maintain electrical power, there are some devices available using battery packs, such as intrusion alarms, security lighting, and smoke detectors which through audible horn alarms can alert nearby neighbors. These battery packs must be replaced every 3 months to 2 years, depending on type and usage. In combination with a cellular phone, they can also provide some level of direct communication with police and fire departments.

If at all possible, new temporary electric service should be provided to the building (see fig. 17). Generally a telephone

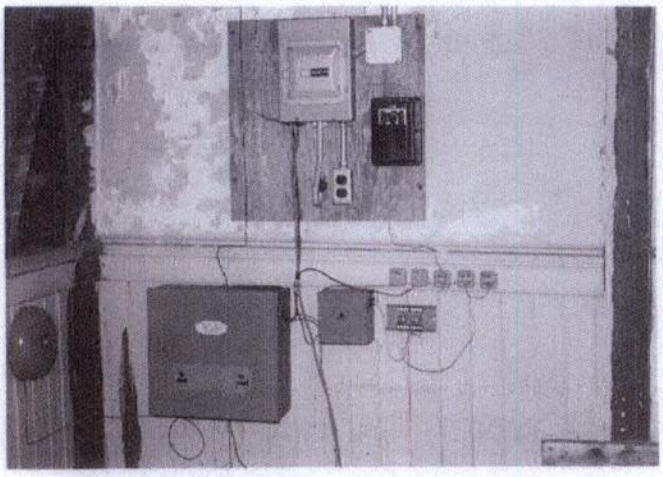


Figure 17. Security systems are very important for mothballed buildings if they are located where fire and security services are available. A temporary electric service with battery back-up has been installed in this building. Intrusion alarms and ionization smoke/fire detectors are wired directly to the nearby security service.

line is needed as well. A hard wired security system for intrusion and a combination rate-of-rise and smoke detector can send an immediate signal for help directly to the fire department and security service. Depending on whether or not heat will be maintained in the building, the security system should be designed accordingly. Some systems cannot work below 32°F (0°C). Exterior lighting set on a timer, photo electric sensor, or a motion/infra-red detection device provides additional security.

Providing adequate ventilation to the interior. Once the exterior has been made weathertight and secure, it is essential to provide adequate air exchange throughout the building. Without adequate air exchange, humidity may rise to unsafe levels, and mold, rot, and insect infestation are likely to thrive (see fig. 18). The needs of each historic resource must be individually evaluated because there are so many variables that affect the performance of each interior space once the building has been secured. A

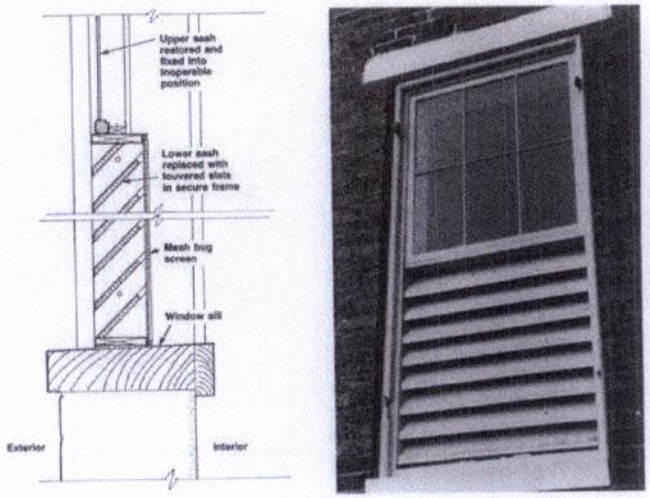


Figure 18. Heavy duty wooden slated louvers were custom fabricated to replace the deteriorated lower sash. The upper sash were rebuilt to retain the historic appearance and to allow light into this vacant historic building. Refer back to Fig. 1 for a view of the building. Photo: Charles E. Fisher, NPS. Drawing by Thomas Vitanza.

mechanical engineer or a specialist in interior climates should be consulted, particularly for buildings with intact and significant interiors. In some circumstances, providing heat during the winter, even at a minimal 45° F (7°C), and utilizing forced-fan ventilation in summer will be recommended and will require retaining electrical service. For masonry buildings it is often helpful to keep the interior temperature above the spring dew point to avoid damaging condensation. In most buildings it is the need for summer ventilation that outweighs the winter requirements.

Many old buildings are inherently leaky due to loose-fitting windows and floorboards and the lack of insulation. The level of air exchange needed for each building, however, will vary according to geographic location, the building's construction, and its general size and configuration.

There are four critical climate zones when looking at the type and amount of interior ventilation needed for a closed up building: hot and dry (southwestern states); cold and damp (Pacific northwest and northeastern states); temperate and humid (Mid-Atlantic states, coastal areas); and hot and humid (southern states and the tropics). (See fig. 19 for a chart outlining guidance on ventilation.)

Once closed up, a building interior will still be affected by the temperature and humidity of the exterior. Without proper ventilation, moisture from condensation may occur and cause damage by wetting plaster, peeling paint, staining woodwork, warping floors, and in some cases even causing freeze thaw damage to plaster. If moist conditions persist in a property, structural damage can result from rot or returning insects attracted to moist conditions. Poorly mothballed masonry buildings, particularly in damp and humid zones have been so damaged on the interior with just one year of unventilated closure that none of the interior finishes were salvageable when the buildings were rehabilitated.

The absolute minimum air exchange for most mothballed buildings consists of one to four air exchanges every hour; one or two air exchanges per hour in winter and often twice that amount in summer. Even this minimal exchange may foster mold and mildew in damp climates, and so monitoring the property during the stabilization period and after the building has been secured will provide useful information on the effectiveness of the ventilation solution.

There is no exact science for how much ventilation should be provided for each building. There are, however, some general rules of thumb. Buildings, such as adobe structures, located in hot and arid climates may need no additional ventilation if they have been well weatherized and no moisture is penetrating the interior. Also frame buildings with natural cracks and fissures for air infiltration may have a natural air exchange rate of 3 or 4 per hour, and so in arid as well as temperate climates may need no additional ventilation once secured. The most difficult

VENTILATION GUIDANCE CHART

CLIMATE	AIR EXCHANGES		VENTILATION				
Temperature and Humidity	Winter air exchange per hour	Summer air exchange per hour	Frame Buildings passive louvering		Masonry Buildings passive louvering		Masonry Buildings fan combination
			% of openings louvered		% of openings louvered		one fan + % louvered
			winter	summer	winter	summer	summer
hot and dry Southwestern areas	less than 1	less than 1	N/A	N/A	N/A	N/A	N/A
cold and damp Northeastern & Pacific northwestern areas	1	2-3	5%	10%	10%	30%	20%
temperate/humid Mid-Atlantic & coastal areas	2	3-4	10%	20%	20%	40%	30%
hot and humid Southern states & tropical areas	3	4 or more	20%	30%	40% or more	80%	40% or more

Figure 19. This is a general guide for the amount of louvering which might be expected for a medium size residential structure with an average amount of windows, attic, and crawl space ventilation. There is currently research being done on effective air exchanges, but each project should be evaluated individually. It will be noticed from the chart that summer louvering requirements can be reduced with the use of an exhaust fan. Masonry buildings need more ventilation than frame buidings. Chart prepared by Sharon C. Park, AIA and Ernest A. Conrad, PE.

buildings to adequately ventilate without resorting to extensive louvering and/or mechanical exhaust fan systems are masonry buildings in humid climates. Even with basement and attic vent grills, a masonry building many not have more than one air exchange an hour. This is generally unacceptable for summer conditions. For these buildings, almost every window opening will need to be fitted out with some type of passive, louvered ventilation.

Depending on the size, plan configuration, and ceiling heights of a building, it is often necessary to have louvered opening equivalent to 5%-10% of the square footage of each floor. For example, in a humid climate, a typical 20'x30' (6.1m x 9.1m) brick residence with 600 sq. ft.(55.5 sq.m) of floor space and a typical number of windows, may need 30-60 sq. ft.(2.75sq.m-5.5 sq. m) of louvered openings per floor. With each window measuring 3'x5'(.9m x 1.5 m) or 15 sq. ft. (1.3 sq.m), the equivalent of 2 to 4 windows per floor may need full window louvers.

Small pre-formed louvers set into a plywood panel or small slit-type registers at the base of inset panels generally cannot provide enough ventilation in most moist climates to offset condensation, but this approach is certainly better than no louvers at all. Louvers should be located to give cross ventilation, interior doors should be fixed ajar at least 4" (10cm) to allow air to circulate, and hatches to the attic should be left open.

Monitoring devices which can record internal temperature and humidity levels can be invaluable in determining if the internal climate is remaining stable. These units can be powered by portable battery packs or can be wired into electric service with data downloaded into laptop computers periodically (see fig. 20). This can also give long-term information throughout the mothballing years. If it is determined that there are inadequate air exchanges to keep interior moisture levels under control, additional passive ventilation can be increased, or, if there is electric service, mechanical exhaust fans can be installed. One fan in a small to medium sized building can reduce the amount of louvering substantially.

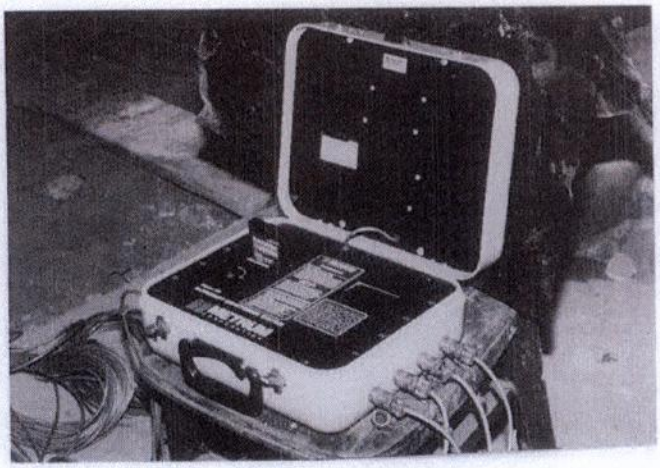


Figure 20. Portable monitors used to record temperature and humidity conditions in historic buildings during mothballing can help identify ventilation needs. This data can be downloaded directly into a lap top computer on site. These monitors are especially helpful over the long term for buildings with significant historic interiors or which are remaining furnished. If interiors are remaining damp or humid, additional ventilation should be added or the source of moisture controlled.

If electric fans are used, study the environmental conditions of each property and determine if the fans should be controlled by thermostats or automatic timers. Humidistats, designed for enclosed climate control systems, generally are difficult to adapt for open mothballing conditions. How the system will draw in or exhaust air is also important. It may be determined that it is best to bring dry air in from the attic or upper levels and force it out through lower basement windows (see fig. 21). If the basement is damp, it may be best to zone it from the rest of the building and exhaust its air separately. Additionally, less humid day air is preferred over damper night air, and this can be controlled with a timer switch mounted to the fan.

The type of ventilation should not undermine the security of the building. The most secure installations use custom-made grills well anchored to the window frame, often set in plywood security panels. Some vents are formed using heavy millwork louvers set into existing window openings (refer back to fig.18). For buildings where security is not a primary issue, where the interior is modest, and where there has been no heat for a long time, it may be possible to use lightweight galvanized metal grills in the window openings (refer back to fig.7). A cost effective grill can be made from the expanded metal mesh lath used by plasterers and installed so that the mesh fins shed rainwater to the exterior.

Securing mechanical systems and utilities. At the outset, it is important to determine which utilities and services, such as electrical or telephone lines, are kept and which are cut off. As long as these services will not constitute a fire

Figure 21. This electric thermostat/humidistat mounted in the attic vent controls a modified ducted air/fan system. The unit uses temporary exposed sheet metal ducts to pull air through the building and exhaust it out of the basement. For over ten years this fan system in combination with 18" x 18" preformed louvers in selective windows has kept the interior dry and with good air exchanges.

hazard, it is advisable to retain those which will help protect the property. Since the electrical needs will be limited in a vacant building, it is best to install a new temporary electric line and panel (100 amp) so that all the wiring is new and exposed. This will be much safer for the building, and allows easy access for reading the meter (see fig. 22).

Most heating systems are shut down in long term mothballing. For furnaces fueled by oil, there are two choices for dealing with the tank. Either it must be filled to the top with oil to eliminate condensation or it should be drained. If it remains empty for more than a year, it will likely rust and not be reusable. Most tanks are drained if a newer type of system is envisioned when the building is put back into service. Gas systems with open flames should be turned off unless there is regular maintenance and frequent surveillance of the property. Gas lines are shut off by the utility company.

If a hot water radiator system is retained for low levels of heat, it generally must be modified to be a self-contained system and the water supply is capped at the meter. This recirculating system protects the property from extensive damage from burst pipes. Water is replaced with a water/glycol mix and the reserve tank must also be filled with this mixture. This keeps the modified system from freezing, if there is a power failure. If water service is cut off, pipes should be drained. Sewerage systems will require special care as sewer gas is explosive. Either the traps must be filled with glycol or the sewer line should be capped off at the building line.

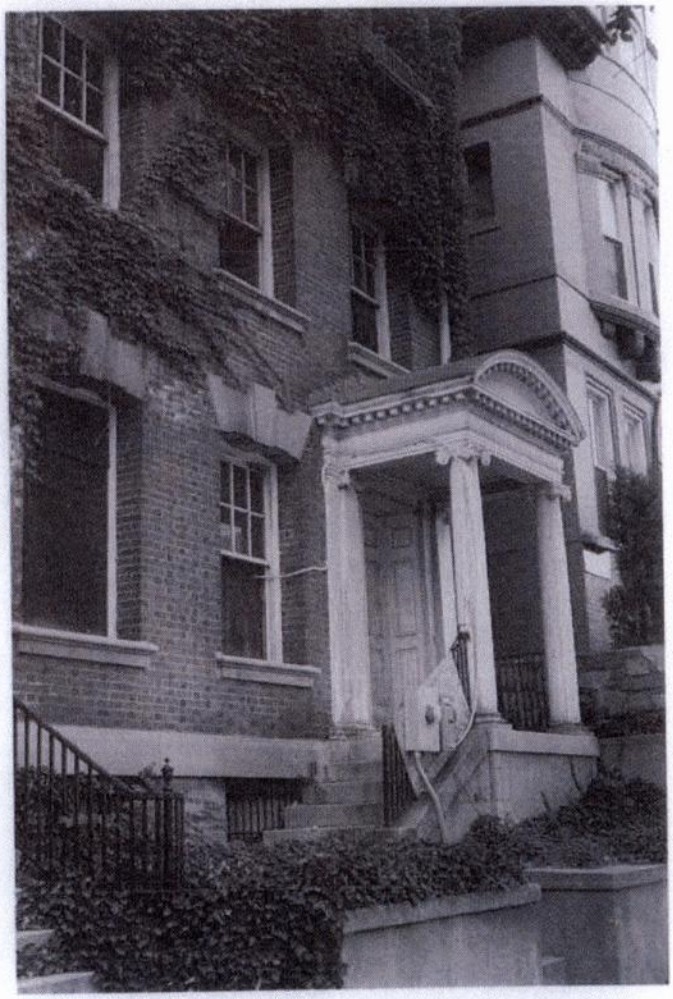


Figure 22. All systems except temporary electric have been shut off at this residence which has been mothballed over 20 years. An electric meter and 100 amp panel box have been set on a plywood panel at the front of the building. It is used for interior lighting and various alarm systems. The building, however, is showing signs of moisture problems with efflourescent stains on the masonry indicating the need for gutter maintenance and additional ventilation for the interior. The vegetation on the walls, although picturesque, traps moisture and is damaging to the masonry. Photo: H. Ward Jandl, NPS.

Developing a maintenance and monitoring plan. While every effort may have been made to stabilize the property and to slow the deterioration of materials, natural disasters, storms, undetected leaks, and unwanted intrusion can still occur. A regular schedule for surveillance, maintenance, and monitoring should be established: (See fig. 23 for maintenance chart).

MAINTENANCE CHART

periodic
- ❑ regular drive by surveillance
- ❑ check attic during storms if possible

monthly walk arounds
- ❑ check entrances
- ❑ check window panes for breakage
- ❑ mowing as required
- ❑ check for graffiti or vandalism

enter every 3 months to air out
- ❑ check for musty air
- ❑ check for moisture damage
- ❑ check battery packs and monitoring equipment
- ❑ check light bulbs
- ❑ check for evidence of pest intrusion

every 6 months; spring and fall
- ❑ site clean-up; pruning and trimming
- ❑ gutter and downspout check
- ❑ check crawlspace for pests
- ❑ clean out storm drains

every 12 months
- ❑ maintenance contract inspections for equipment/utilities
- ❑ check roof for loose or missing shingles
- ❑ termite and pest inspection/treatment
- ❑ exterior materials spot repair and touch up painting
- ❑ remove bird droppings or other stains from exterior
- ❑ check and update building file

Figure 23. Maintenance Chart. Many of the tasks on the maintenance chart can be done by volunteer help or service contracts. Regular visits to the site will help detect intrusion, storm damage, or poor water drainage.

The fire and police departments should be notified that the property will be vacant. A walk-through visit to familiarize these officials with the building's location, construction materials, and overall plan may be invaluable if they are called on in the future.

The optimum schedule for surveillance visits to the property will depend on the location of the property and the number of people who can assist with these activities. The more frequent the visits to check the property, the sooner that water leaks or break-ins will be noticed. Also, the more frequently the building is entered, the better the air exchange. By keeping the site clear and the building in good repair, the community will know that the building has not been abandoned (see fig. 24). The involvement of neighbors and community groups in caring for the property can ensure its protection from a variety of catastrophic circumstances.

The owner may utilize volunteers and service companies to undertake the work outlined in the maintenance chart.

Service companies on a maintenance contract can provide yard, maintenance, and inspection services, and their reports or itemized bills reflecting work undertaken should be added to update the building file.

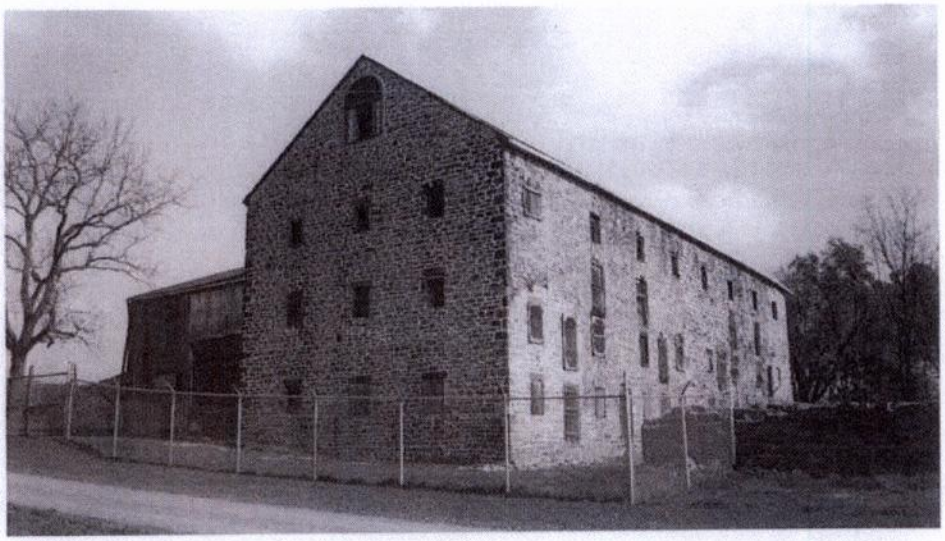


Figure 24. Once mothballed, a property must still be monitored and maintained. The openings in this historic barn has been modified with a combination of wood louvers and metal mesh panels which require little maintenance. The grounds are regularly mowed, even inside the chain link security fence. Photo: Williamsport Preservation Training Center, NPS.

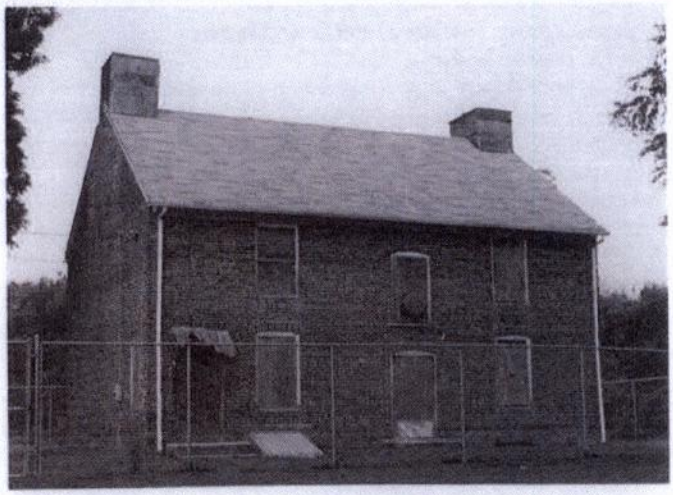
Components of a Mothballing Project

Document: Brearley House, New Jersey; 2½ story center hall plan house contains a high degree of integrity of circa 1761 materials and significant early 19th century additions. Deterioration was attributable to leaking roof, unstable masonry at gables and chimneys, deteriorating attic windows, poor site drainage, and partially detached gutters. Mothballing efforts are required for approximately 7-10 years.

Stabilize: Remove bat droppings from attic using great caution. Secure historic chimneys and gable ends with plywood panels. Do not take historic chimneys down. Reroof with asphalt shingles and reattach or add new gutters and downspouts. Add extenders to downspouts. Add bug screens to any ventilation areas. Add soil around foundation and slope to gain positive drain; do not excavate as this will disturb archeological evidence.

Mothball: Install security fence around the property. Secure doors and windows with plywood panels (½" exterior grade). Install preformed metal grills in basement and attic openings. Add surface mounted wiring for ionization smoke and fire detection with direct wire to police and fire departments. Shut off heat and drain pipes. Add window exhaust fan set on a thermostatic control. Provide for periodic monitoring and maintenance of the property.

Figure 25. Above is a summary of the tasks that were necessary in order to protect this significant property while restoration funds are raised. Photographs: Michael Mills; Ford Farewell Mills Gatsch Architects.



a. A view showing the exterior of the house in its mothballed condition.

b. Plywood panels stabilize the chimneys. Note the gable vents.

c. The exhaust fan has tamper-proof housing.

MOTHBALLING CHECKLIST

Mothballing Checklist In reviewing mothballing plans, the following checklist may help to ensure that work items are not inadvertently omitted.	Yes	No	Date of action or comment.
Moisture • Is the roof watertight? • Do the gutters retain their proper pitch and are they clean? • Are downspout joints intact? • Are drains unobstructed? • Are windows and doors and their frames in good condition? • Are masonry walls in good condition to seal out moisture? • Is wood siding in good condition? • Is site properly graded for water run-off? • Is vegetation cleared from around the building foundation to avoid trapping moisture?			
Pests • Have nests/pests been removed from the building's interior and eaves? • Are adequate screens in place to guard against pests? • Has the building been inspected and treated for termites, carpenter ants, and rodents? • If toxic droppings from bats and pigeons are present, has a special company been brought in for its disposal?			
Housekeeping • Have the following been removed from the interior: trash, hazardous materials such as inflammable liquids, poisons, and paints and canned goods that could freeze and burst? • Is the interior broom-clean? • Have furnishings been removed to a safe location? • If furnishings are remaining in the building, are they properly protected from dust, pests, ultraviolet light, and other potentially harmful problems? • Have significant architectural elements that have become detached from the building been labeled and stored in a safe place? • Is there a building file?			
Security • Have fire and police departments been notified that the building will be mothballed? • Are smoke and fire detectors in working order? • Are the exterior doors and windows securely fastened? • Are plans in place to monitor the building on a regular basis? • Are the keys to the building in a secure but accessible location? • Are the grounds being kept from becoming overgrown?			
Utilities • Have utility companies disconnected/shut off or fully inspected water, gas, and electric lines? • If the building will not remain heated, have water pipes been drained and glycol added? • If the electricity is to be left on, is the wiring in safe condition?			
Ventilation • Have steps been taken to ensure proper ventilation of the building? • Have interior doors been left open for ventilation purposes? • Has the secured building been checked within the last 3 months for interior dampness or excessive humidity?			

Figure 26.. MOTHBALL CHECKLIST. This checklist will give the building owner or manager a handy reference guide to items that should be addressed when mothballing a historic building. Prepared by H. Ward Jandl, NPS.

Conclusion

Providing temporary protection and stabilization for vacant historic buildings can arrest deterioration and buy the owner valuable time to raise money for preservation or to find a compatible use for the property. A well planned mothballing project involves documenting the history and condition of the building, stabilizing the structure to slow down its deterioration, and finally mothballing the structure to secure it (See fig. 25). The three highest priorities for the building while it is mothballed are 1) to protect the building from sudden loss, 2) to weatherize and maintain the property to stop moisture penetration, and 3) to control the humidity levels inside once the building has been secured. See Mothballing Checklist Figure 26.

While issues regarding mothballing may seem simple, the variables and intricacies of possible solutions make the decision-making process very important. Each building must be individually evaluated prior to mothballing. In addition, a variety of professional services as well as volunteer assistance are needed for careful planning and repair, sensitively designed protection measures, follow-up security surveillance, and cyclical maintenance (see fig. 27).

In planning for the future of the building, complete and systematic records must be kept and generous funds allocated for mothballing. This will ensure that the historic property will be in stable condition for its eventual preservation, rehabilitation, or restoration.

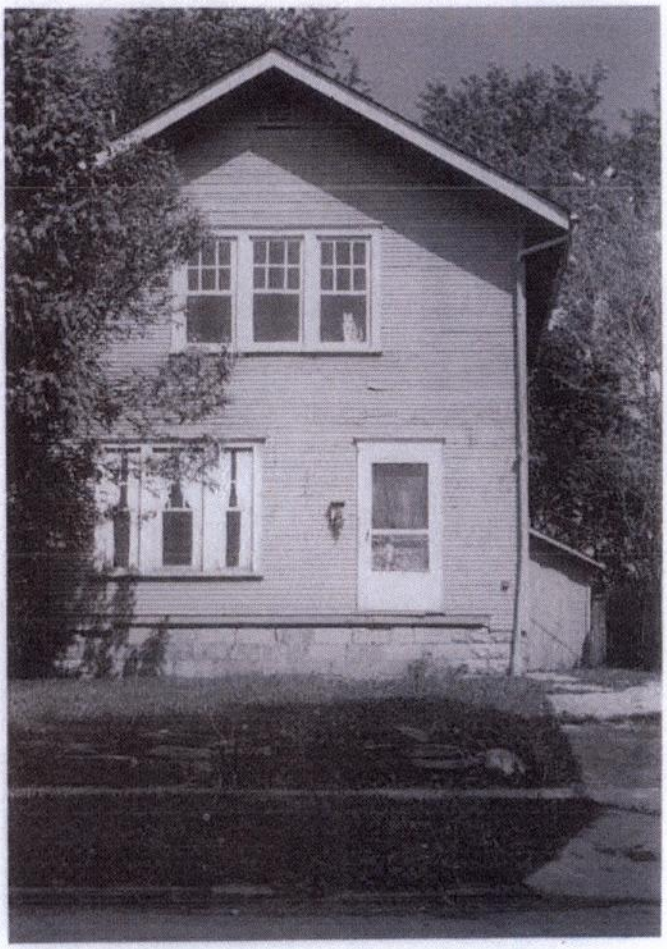


Figure 27. This residential building blends into its neighborhood even though all the windows have been covered over and the front steps are missing. The grounds are maintained and the special attention to decoratively painting the window panels shows that the property is being well cared for until it can be rehabilitated. Photo: Ohio Historical Society.

Acknowledgements

This publication has been prepared pursuant to the National Historic Preservation Act of 1966, as amended, which directs the Secretary of the Interior to develop and make available information concerning historic properties. Comments on the usefulness of this publication may be directed to H. Ward Jandl, Deputy Chief, Preservation Assistance Division, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127. This publication is not copyrighted and can be reproduced without penalty. Normal procedures for credit to the author and the National Park Service are appreciated.

The author, Sharon C. Park, Senior Historical Architect, Preservation Assistance Division, National Park Service, would like to acknowledge the assistance of the following individuals in the preparation and review of this publication. H. Ward Jandl served as the technical editor and assisted with producing this Preservation Brief. In addition the following persons have provided invaluable information and illustrations: Ernest A. Conrad, PE; Doug Hicks, NPS Williamsport Preservation Training Center; Thomas C. Taylor, Colonial Williamsburg; Karen Gordon, Seattle Urban Conservation Office; Kevin B. Stoops, Seattle Department of Parks and Recreation; Michael Mills, AIA; Christine Henry, architect, Mary Beth Hirsch, Ohio Historical Society. Thanks also to Preservation Assistance Division staff members Michael J. Auer, Anne E. Grimmer, Kay D. Weeks, Timothy A. Buehner, and Jean Travers, and to the numerous staff members of the NPS Regional offices who submitted comments.

All photographs and drawings are by the author unless otherwise noted.

Cover photograph: Mothballing of this historic house involved a new membrane roof covering over the historic roof and slatted window covers for security and ventilation. Photo: Williamsport Preservation Training Center, NPS.

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Further Reading

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Michell, Eleanor. *Emergency Repairs for Historic Buildings*. London: Butterworth Architecture, 1988.

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Solon, Thomas E. "Security Panels for the Foster-Armstrong House." *Association for Preservation Technology Bulletin*. Vol XVI no. 3 & 4, 1984. (note the design of the panels, but be aware that additional louvering may be needed on other projects).

City of NORFOLK

C: Dir., Department of Development

To the Honorable Council
City of Norfolk, Virginia

June 28, 2016

From: Charles E. Rigney, Sr., Director of Development

Subject: An ordinance authorizing the conveyance of real property located at 6000 Northampton Boulevard in the City of Norfolk

Reviewed: Peter H. Chapman, Deputy City Manager

Ward/Superward: 4/7

Approved: Marcus D. Jones, City Manager

Item Number: **PH-13**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** SF Cary Holding LLC

III. **Description:**
This agenda item is an ordinance authorizing the conveyance of real property located at 6000 Northampton Blvd in the City of Norfolk (the "City") in accordance with the terms and conditions of the agreement of sale.

IV. **Analysis**
The City is the owner of approximately 18.78 acres of land located at 6000 Northampton Boulevard (the "property"). SF Cary Holding LLC ("SF Cary") desires to purchase the property for development of a retail establishment.

V. **Financial Impact**
- The City has agreed to a purchase price of $6,000,000 for the sale of the property.
- The sale of this property would place it back on the tax rolls and provide a world class shopping destination.
- The project is estimated to be a $75 million investment and will generate at least $2.5 million in direct city tax revenues.
- The project would create approximately 250 full time jobs and nearly 500 construction jobs.

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

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Economic Development Authority, the Department of Development and the City Attorney's Office.

Supporting Material from the Department of Development:

- Ordinance
- Agreement of Sale
- Exhibits

6/9/2016mr

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT. Development

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE AUTHORIZING THE CONVEYANCE OF REAL PROPERTY LOCATED AT 6000 NORTHAMPTON BOULEVARD IN THE CITY OF NORFOLK IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE AGREEMENT OF SALE.

- - -

WHEREAS, the City of Norfolk is the owner in fee simple of a parcel of land located at the intersection of Interstate 64 and Northampton Boulevard and with an address of 6000 Northampton Boulevard, in the City of Norfolk, also known as City of Norfolk GPIN1458563545 (the "Property");

WHEREAS, the buyer desires to purchase and to develop the Property upon the terms and conditions set forth in the Agreement of Sale attached hereto as Exhibit A;

WHEREAS, in order to allow for closing under the Agreement of Sale and for the development of the Property, it is the desire and intention of the City Council to accept certain easements for utilities, drainage and access and to enter into maintenance and other agreements as contemplated in the Agreement of Sale and as required by the City's administrative departments as part of the site development plan review and approval process; now therefore

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

Section 1:- That the conveyance by the City of Norfolk of property located at 6000 Northampton Boulevard in the City of Norfolk, as more particularly described in the Agreement of Sale attached hereto as Exhibit A, for the sum of $6,000,000.00 and upon the terms and conditions set forth in the Agreement of Sale is hereby authorized and approved.

Section 2:- The City Manager is authorized to correct, amend, or revise the Agreement of Sale as he may deem necessary in order to carry out the intent of the Council and to execute the Agreement of Sale, 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 that City Manager and other proper officers of the City are hereby authorized to deliver a deed to the buyer for the Property, in form satisfactory to the City Attorney, and to accept any easements for utilities, drainage, and access and to enter into any maintenance or other agreements contemplated by the Agreement of Sale or as required by the City's administrative departments as part of the City's site development plan review and approval process, each in form satisfactory to the City Attorney, and to do all things necessary and proper to effect the conveyance of the Property by the City.

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

AGREEMENT OF SALE
BETWEEN
CITY OF NORFOLK
(AS SELLER)
AND
IKEA PROPERTY, INC.
(AS BUYER)

Dated: _____ _____, 2016

Property: 18.78 +/- acres of land total, of which approximately 16.00 +/- acres are usable, located at the intersection of Interstate 64 and Northampton Boulevard and known as 6000 Northampton Boulevard in the City of Norfolk, Commonwealth of Virginia

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AGREEMENT OF SALE

THIS AGREEMENT OF SALE (the "*Agreement*") is made as of _____ __, 2016, by and between the CITY OF NORFOLK, a municipal corporation of the Commonwealth of Virginia ("*Seller*"), and IKEA PROPERTY, INC., a Delaware corporation ("*Buyer*").

Background

A. Seller is the owner in fee simple of approximately 18.78 +/- gross acres of land, of which approximately 16.00 +/- acres are usable (the "*Usable Acreage*"), located at the intersection of Interstate 64 and Northampton Boulevard and known as 6000 Northampton Boulevard, in the City of Norfolk (the "*City*"), Commonwealth of Virginia, also known as City of Norfolk GPIN1458563545 (the "*Sale Parcel*"), including all of Seller's rights, titles and interests, if any, in and to: any strips, gores, easements, licenses, rights of way, ditches, privileges or other rights or appurtenances; any and all strips or gores of land abutting such Sale Parcel and lying between such Sale Parcel and any street, road, highway, avenue, or alley, including any after-acquired title or reversion in and to the same; adjacent streets, as depicted on the site drawing attached hereto as **Exhibit A** and made a part hereof (the "*Parcel Plan*"), but excluding the area around Lake Wright which is 25 feet from the top of the bank (the "*Lake Buffer Parcel*"), title to which the City shall retain.

B. Buyer desires to purchase the Sale Parcel from Seller together with all "Appurtenances," "Development Rights," and "Contract Rights."

(1) Appurtenances. The term "*Appurtenances*" means, with respect to all or any portion of the Sale Parcel, all of Seller's rights, titles and interests in and to: any strips, gores, easements, licenses, rights of way, ditches, privileges or other rights or appurtenances; any and all strips or gores of land abutting the Sale Parcel or lying between the Sale Parcel and any adjoining property or any street, road, highway, avenue, or alley, including any after-acquired title or reversion in and to the same; adjacent streets, roads, alleys, or rights-of-way, open or proposed, public ways; all oil, gas, coal, and other minerals on or under the Sale Parcel; and any reversionary rights attributable or appurtenant to the Sale Parcel.

(2) Condemnation Awards. The term "*Condemnation Awards*" means, with respect to all or any portion of the Sale Parcel, all of Seller's rights, titles, and interests in and to any award with respect to with respect to an event pursuant to which all or any portion of the Property is condemned or taken by eminent domain proceedings by any public authority or if a written notice of any such prospective condemnation or taking is given by any public authority ("*Condemnation*") that is effective after the "Effective Date" (defined in Section 2.1.1), for (a) any taking by condemnation or eminent domain proceedings of all or any portion of the Sale Parcel, or (b) any damage to all or any portion of the Sale Parcel by reason of a change of grade of any street, avenue, road, highway, or alley.

(3) Development Rights. The term "Development Rights" means, with respect to all or any portion of the Sale Parcel, all of Seller's rights, titles, and interests in and to: any and all applications, permits, approvals and licenses, letters of credit, deposits and other fiscal security; any and all rights to utilities (including service commitments, capacity, rights, allocations, taps and

connections, capital improvement contracts, utility construction agreements with municipal or other public utilities, regional detention rights, retention rights, and rights to discounts, refunds or reimbursements); rights under any traffic phasing agreements or similar contracts; rights under preliminary and/or final plans, plats, parcel maps and all other development approvals; rights to receive or install water, sewer, wastewater, electricity, gas, telephone, telecommunications (including cable television, internet, ISDN, DSL, and T-1 lines, etc.), drainage, or other utilities or services; rights to build, construct or install streets, driveways, or other access on the Sale Parcel (or for the benefit of the Sale Parcel and if located outside of the Sale Parcel, Seller shall provide a conditional assignment of contract rights for all off-site improvements being constructed by Seller (or for its benefit) to benefit (in whole or in part) the Sale Parcel), including all agreements by Seller (or for its benefit) relating to the construction of roadways, ingress and egress to and from the Sale Parcel, access to the Sale Parcel and any sharing of costs arrangements related thereto; rights under any declarations of covenants, conditions, and restrictions or any reciprocal or other easement agreements; and all other development rights, powers, privileges, options or other benefits associated with, that pertain to, are attributable to, are appurtenant to, apply to, or which otherwise benefit all or any portion of the Sale Parcel but excluding any liabilities or obligations that pertain to the period prior to "Closing" (defined in Section 9.1) or otherwise do not pertain to the development of the Sale Parcel corresponding to the Development Rights being conveyed and/or assigned to Buyer.

(4) Contract Rights. The term "*Contract Rights*" means, with respect to all or any portion of the Sale Parcel, all of Seller's rights, titles, and interests in and to: any and all rents, leases, contract rights, guarantees, warranties, choses of action, and causes of action (except those choses of action and causes of action in the nature of "tort" owned by or inuring to Seller arising before the Closing) related to the Sale Parcel, or any of the foregoing.

C. As used herein, the term "*Property*" means the Sale Parcel, together with all of the Appurtenances, Condemnation Awards, Development Rights, and Contract Rights.

D. Seller desires to sell, transfer, and convey the Property to Buyer, and Buyer desires to purchase the Property from Seller, all for the Purchase Price and on the other terms and conditions hereinafter set forth.

E. Anything herein to the contrary notwithstanding, neither the term "*Property*" nor any of the constituent elements thereof, shall be deemed to include, and none of the terms or provisions of this Agreement shall be deemed to assign, convey, or otherwise transfer, or in any way limit, the Seller's rights, authority, discretion or function as a municipal corporation and political subdivision of the Commonwealth of Virginia in the exercise of any governmental or proprietary function with respect to the ownership, use, development, construction and operation of the Property and the Intended Improvements (hereinafter defined), including Seller's approval of subdivision plats and site plans as well as review and approval of construction plans and specifications, and inspections requisite for issuance of construction permits and certificates of occupancy.

NOW THEREFORE, intending to be legally bound, the parties hereto agree as follows:

Terms

1. **Sale and Purchase of the Property**. Seller hereby agrees to sell, transfer, and convey the Property to Buyer, and Buyer hereby agrees to purchase and accept the Property from Seller, for the Purchase Price and on and subject to the other terms and conditions set forth in this Agreement.

2. **Purchase Price**.

2.1. Subject to the terms and conditions of this Section 2.1, the purchase price for the Property (the "*Purchase Price*") shall be SIX MILLION AND NO/100 DOLLARS ($6,000,000.00).

2.1.1. Within five (5) business days after the date that this Agreement has been executed and delivered by both Seller and Buyer (the "*Effective Date*"), Buyer shall deliver to Buyer's title insurance company, _____ (the "*Title Insurer*"), the sum of FIFTY THOUSAND AND 00/100 DOLLARS ($50,000.00), which sum will be delivered into escrow in accordance with Section 3. Such sum, together with all interest accrued thereon, is sometimes herein referred to as the "*Deposit*." The Title Insurer shall deposit such sum into an interest bearing escrow account in a federally insured financial institution (the "*Escrow Account*").

3. **Escrow Of Deposit**.

3.1. The Deposit shall be deposited with, and shall be held in the Escrow Account and disbursed by, the Title Insurer, all in accordance with the provisions of this Agreement, including this Section 3.

3.2. The Title Insurer shall acknowledge its receipt of the Deposit and agrees to hold the same and all other funds hereafter received by the Title Insurer on account of the Deposit, as escrowee, in the Escrow Account in strict compliance with the provisions of this Agreement.

3.3. Seller and Buyer agree, and hereby jointly instruct the Title Insurer, that the Deposit shall be disbursed as follows:

3.3.1. If Buyer terminates this Agreement pursuant to Section 6.1 (Conditions to be Satisfied on or before Due Diligence Period End Date), Section 6.2 (Conditions to be Satisfied By Buyer on or before the External Approvals Deadline), or any other applicable provision under which Buyer has the right to terminate this Agreement, then the Deposit will be disbursed to Buyer, and except for those obligations which expressly survive the termination of this Agreement, neither party will have any further obligations under this Agreement.

3.3.2. If Closing is not completed by reason of Buyer's default, then, pursuant to Section 13.1, the Deposit shall be paid over to Seller and retained as liquidated damages and as the sole remedy for such Buyer's default, and except for those obligations which expressly survive the termination of this Agreement, neither party will have any further obligations under this Agreement.

3.3.3. If and when Closing occurs hereunder:

(a) the Deposit shall be credited against the Purchase Price; and

(b) the balance of the Purchase Price (i.e., the difference of (i) the Purchase Price, minus (ii) the Deposit and all other funds remaining in the Escrow Account), subject to adjustments and apportionments as set forth herein, shall be paid at Closing in accordance with Section 9.3.1.

3.4. Seller and Buyer hereby instruct the Title Insurer (a) to disburse the Deposit to Buyer upon receipt of Buyer's timely notice of termination pursuant to Section 6.1 (Conditions to be Satisfied on or before Due Diligence Period End Date) without necessity of any further instructions or confirmation (written or oral) from Seller, and (b) that any contrary instructions of Seller (written or oral) are null and void and of no force or effect. Otherwise, the Title Insurer shall be obligated to disburse the Deposit at Closing or upon any cancellation or termination of this Agreement, only upon the written instructions of both parties, should the Title Insurer in its discretion request such instructions; and in the absence of such instructions or in the event of any dispute the Title Insurer shall be and is hereby authorized, but not obligated, to pay the Deposit into court.

3.5. The Title Insurer's performance hereunder is subject to the following:

3.5.1. The duties of the Title Insurer are only as herein specifically provided, and are purely ministerial in nature, and the Title Insurer shall incur no liability whatever except for willful misconduct or negligence, as long as the Title Insurer has acted in good faith;

3.5.2. The Title Insurer shall not be liable or responsible for the collection of the proceeds of any check for the Deposit;

3.5.3. In the performance of its duties hereunder, the Title Insurer shall be entitled to rely upon any document, instrument, or signature believed by it to be genuine and purportedly signed by either of the other parties or their successors or assigns;

3.5.4. The Title Insurer may assume that any person purporting to give any notice or instructions in accordance with the provisions hereof has been duly authorized to do so;

3.5.5. The Title Insurer shall not be bound by any modifications, cancellation, or rescission of this Agreement unless in writing and signed by Seller and Buyer; and

3.5.6. Seller (subject to applicable Laws) and Buyer shall jointly and severally reimburse and indemnify the Title Insurer for, and hold it harmless against, any and all loss, liability, costs, or expenses in connection herewith, including reasonable attorneys' fees and disbursements, incurred by the Title Insurer in connection with its acceptance or performance of its duties and obligations under this Agreement, as well as the reasonable costs and expenses of defending against any claim or liability arising out of or relating to the Title Insurer's performance under this Agreement, except to the extent of any negligence or willful misconduct by the Title Insurer.

4. **Covenants, Representations, and Warranties of Seller**. As used in this Agreement, "*Seller's Knowledge*" means the actual knowledge of facts or other relevant information by Chuck Rigney, Director of the Economic Development Authority of the City of Norfolk, Marcus D. Jones, City Manager of Norfolk, and Peter Chapman, Deputy City Manager of Norfolk (the "*Seller's Representatives*"), each without any duty to further investigate or inquire; however, Seller's Representatives shall not have any personal liability whatsoever for the representations and warranties made herein or for any other matters relating to this Agreement. Seller covenants, represents, and warrants to Buyer as follows:

4.1. Disclosed Information. Seller has provided to Buyer true, correct, and complete copies of all of the Disclosed Information identified in **Exhibit B** attached to and made a part of this Agreement (the "*Disclosed Information*"), and the Disclosed Information includes all of the following items that, to Seller's Knowledge, are in the possession or control of Seller, any person, agency or entity controlling, controlled by, or under common control with Seller (a "*Seller Affiliate*"), or any officer, director, member, principal, or employee of Seller or a Seller Affiliate (collectively, "*Seller Parties*;" each, individually, a "*Seller Party*"), or any contractor, agent, or other person or entity who is under the control Seller, a Seller Affiliate, or a Seller Party, or can be obtained by Seller, a Seller Affiliate, or a Seller Party from any contractor, agent, or other person or entity who prepared or furnished such Disclosed Information to Seller, such Seller Affiliate, or such Seller Party:

4.1.1. all applications and submissions (other than zoning applications and submissions), made by Seller, a Seller Affiliate, or a Seller Party to, and all permits, approvals, and licenses received by any Seller, a Seller Affiliate, or a from, any federal, state, City or municipal court, body, department, commission, board, bureau or agency, or other governmental or quasi-governmental instrumentality (including public utilities) having jurisdiction (each a "*Governmental Authority*" and collectively the "*Governmental Authorities*") that pertain to, are attributable to, are appurtenant to, apply to, or that otherwise benefit, burden, or otherwise affect the design, construction, development, ownership, operation, or use of all or any portion of the Property or the "Intended Improvements" (the "*Existing Applications, Permits, Approvals and Licenses*"), together with the zoning ordinances of the City of Norfolk, which, to Seller's Knowledge, are applicable to the Property. "*Intended Improvements*" means and includes an approximately 350,000 square foot blue and yellow IKEA retail furniture and furnishings store (including any other uses found from time to time in any other IKEA retail store), with an exclusive parking field (and future parking structure) of at least 1,200 spaces,[1] together with all of Buyer's required colors and trade dress and building and site signage and flags, including a navigational sign tower at least 120 feet in height (the "*Navigation Sign*"), all related on-site and off-site improvements, and any and all development and contract rights and all other appurtenances thereto necessary to develop the store and other improvements contemplated herein;

4.1.2. any and all agreements and other documents (the "*Existing Utility Documents*") regarding rights (the "*Existing Utility Rights*") to receive or install water (both potable and fire prevention), sanitary sewer, storm sewer, drainage, electricity, gas, telephone, telecommunications (including cable television, internet, ISDN, DSL, and T-1 lines), fiber optic,

[1] Buyer's square footage, store configuration (elevated or not), and parking requirements stated here are approximate and are subject to change during the due diligence process.

or other utilities (including service commitments, capacity, rights, allocations, taps and connections, capital improvement contracts, utility construction agreements with municipal or other public utilities, regional detention rights and rights to discounts, refunds or reimbursements) that pertain to, are attributable to, are appurtenant to, apply to, or that otherwise benefit, burden, or otherwise affect the design, construction, development, ownership, operation, or use of all or any portion of the Property or the Intended Improvements;

4.1.3. any and all agreements and other documents (the "*Existing Access Documents*") regarding rights (the "*Existing Access Rights*") to design, construct, develop, own, operate, or use any street, road, highway, driveway, right of way, access way, curb cut, point of entrance, point of exit, or other right or means of ingress and egress that pertains to, is attributable to, is appurtenant to, applies to, or that otherwise benefits, burdens, or otherwise affects the design, construction, development, ownership, operation, or use of all or any portion of the Property or the Intended Improvements;

4.1.4. all surveys, title policies, title searches, commitments, and reports (including copies of all vesting deeds and recorded documents referred to therein), and all other recorded and unrecorded agreements and other documents relating to survey or title (the "*Existing Title and Survey Documents*") that pertain to, are attributable to, are appurtenant to, apply to, or that otherwise benefit, burden, or otherwise affect the design, construction, development, ownership, operation, or use of all or any portion of the Property or the Intended Improvements;

4.1.5. any and all agreements or contracts (oral or written, formal or informal) or other documents (the "*Existing Service Agreements*") regarding construction, management, leasing, services, equipment, supply, security, maintenance, or concession that pertain to, are attributable to, are appurtenant to, apply to, or that otherwise benefit, burden, or otherwise affect the design, construction, development, ownership, operation, or use of all or any portion of the Property or the Intended Improvements;

4.1.6. all non-privileged reports, studies, and other documents (other than those prepared by Seller, a Seller Affiliate, or a Seller Party) (the "*Existing Physical Investigation Documents*") that pertain to, are attributable to, are appurtenant to, apply to, or that otherwise discuss or address any aspect of the physical condition or regulatory status of all or any portion of the Property, or otherwise affect the design, construction, development, ownership, operation, or use of all or any portion of the Property or the Intended Improvements, including:

(a) "Hazardous Substances" (defined in Section 4.14.1) (including Phase I, Phase II, and any other environmental reports or studies);

(b) geotechnical and soils;

(c) wetlands;

(d) flood plains;

(e) stormwater;

(f) traffic;

(g) zoning, planning, replatting and subdivision;

(h) historical, archeological, conservation, or endangered species;

(i) environmental impact studies; or

(j) development feasibility; and

4.1.7. any and all pleadings, agreements, and other documents (the "*Existing Litigation Documents*") that pertain to, are attributable to, are appurtenant to, apply to, or that otherwise discuss or address any aspect of any action, suit, proceeding, or litigation that was pending or threatened in writing against Seller or all or any portion of the Property at any time during the period of Seller's ownership of the Property; and

4.1.8. all other material information regarding the Property or the Intended Improvements.

4.2. Organization; Authorization.

4.2.1. Seller is a municipal corporation and political subdivision of the Commonwealth of Virginia validly existing under the laws of the Commonwealth of Virginia. The execution and delivery of this Agreement by Seller and the performance by Seller of its obligations hereunder have been duly authorized by all requisite action on the part of Seller.

4.2.2. This Agreement has been executed by all persons and entities necessary in order for Seller to execute, deliver, and perform Seller's obligations under this Agreement (excluding any action of Seller's administrative departments and bodies necessary or desired as part of the External Approvals [defined in Section 14.1] or with respect to acceptance by Seller or conveyance by Seller to Buyer of any property rights not currently contemplated by this Agreement) and all other transaction documents contemplated herein. The execution, delivery, and performance by Seller of this Agreement and all other transaction documents contemplated herein to which Seller is a party do not require any further or additional consents or approvals from, or any filings or registrations with, any Governmental Authority or any other person.

4.3. Enforceability. This Agreement is the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms, and, to Seller's Knowledge, there are no claims, defenses (personal or otherwise) or offsets to the validity of or enforceability against Seller of this Agreement and the documents to be delivered pursuant hereto.

4.4. No Breach. To Seller's Knowledge, the execution and delivery of this Agreement, the consummation of the transactions provided for in this Agreement and the fulfillment of the terms of this Agreement will not result in a breach of any of the terms or provisions of, or constitute a default or an acceleration under, any agreement to which Seller is a party or by which any of Seller or the Property is bound or materially affected, or any judgment, writ, trust, decree or order of any Governmental Authority, or any applicable law, statute, rule, regulation, code, judgment, ordinance, order, writ, injunction, decree, ruling, or requirement of any Governmental Authority (collectively, "*Laws*").

4.5. Title.

4.5.1. Seller is the current owner in fee simple of the Property, and the Property is vacant.

4.5.2. To Seller's Knowledge, the Property is free and clear of all mortgages, liens, claims, judgments, encumbrances, ground rents, leases, tenancies, licenses, security interests, covenants, conditions, restrictions, rights of way, easements, encroachments, and any other matters affecting title, except only the "Permitted Title Exceptions" (defined in Section 14.2), *provided* that nothing in this Section 4.5 shall limit Buyer's absolute right to examine the Permitted Title Exceptions during the Due Diligence Period and terminate this Agreement for any reason or no reason pursuant to Section 6.1 (Conditions to be Satisfied on or before Due Diligence Period End Date) or as otherwise permitted under this Agreement.

4.6. No Breach of Property Documents. To Seller's Knowledge, no default or breach exists under any covenants, conditions, restrictions, rights-of-way, easements, or other matters of record, if any, affecting all or any portion of the Property.

4.7. No Agreements of Sale. No person or other entity has any right, contract, or option to acquire all or any portion of the Property, and there currently exists no purchase agreement, lease agreement, option agreement, letter of intent, request for proposals, offer to build to suit, right of first refusal or first offer, or similar rights with respect to the Property or Seller, and any such prior purchase agreement, lease agreement, option agreement, letter of intent, request for proposals, offer to build to suit, right of first refusal or first offer, or similar right has been revoked or has expired according to its terms.

4.8. Leases. There are no leases, subleases, tenancies, licenses, or other rights of occupancy or use that affect all or any portion of the Property. At Closing, the Property shall be delivered to Buyer free and clear of any tenants or other occupants, and any other claims of occupancy rights, and Buyer shall be entitled to full possession of the Property at Closing.

4.9. No Condemnation. Seller (or any Seller Party) has received no notice of any pending, or, to Seller's Knowledge, threatened Condemnation, expropriation, eminent domain, or similar proceeding affecting all or any portion of the Property.

4.10. No Service Agreements or Employees. There currently exist no construction, management, leasing, service, equipment, supply, security, maintenance, concession, or other contracts or agreements (oral or written, formal or informal) with respect to or affecting all or any portion of the Property that will be binding on Buyer following the Closing.

4.11. Compliance with Laws. To Seller's Knowledge, no portion of the Property, and no method of operation of the Property, is, or ever has been, in violation ("*Violation*") of any Law; and there are no presently outstanding and uncured notices of Violations. Seller has not received any written or oral claim or notice that all or any portion of the Property is not in compliance with:

4.11.1. any Laws; or

4.11.2. any covenants, conditions or restrictions or other recorded or unrecorded documents affecting all or any portion of the Property.

4.11.3. To Seller's Knowledge the operation and use of the Property for Buyer's design, construction, development, ownership, operation, and use on the Property of the Intended Improvements will not violate any easements, covenants, conditions, restrictions, or other title matters affecting all or any portion of the Property. To Seller's Knowledge, no moratorium or other legal matter, proceeding or other fact or condition exists or is pending which threatens to prevent or impair the construction and operation of the Property for the Intended Improvements. No Governmental Authority is currently constructing or installing, nor has any Governmental Authority ordered to be made, improvements affecting the Property; to Seller's Knowledge, all street paving, curbing, sanitary sewers, storm sewers, and other municipal or other governmental improvements which have been constructed or installed have been paid for and will not hereafter be assessed, and all assessments heretofore made that are or were due have been paid in full; and there are no private contractual obligations relating to the installation of or connection to any sanitary sewers or storm sewers.

4.12. Litigation. There is no action, suit, proceeding, or litigation pending or, to Seller's Knowledge, threatened against all or any portion of the Property, or relating to or arising out of or affecting the value, ownership or operation of all or any portion of the Property, or the transactions contemplated hereby, in or before any Governmental Authority, whether or not covered by insurance. If any such action, suit or proceeding is threatened or commenced after the date of Closing (e.g. a slip and fall or other premises liability lawsuit), then Seller shall be responsible for the same and save, defend and hold Buyer harmless therefrom (including all reasonable attorneys' fees, costs and expenses incurred by Buyer in connection therewith) and shall cause its insurer to insure and defend against the same to the extent affecting the Property. There is no insolvency or bankruptcy proceeding pending or, to Seller's Knowledge, contemplated involving Seller as debtor. In the event any proceeding of the character described in this Section 4.12 is initiated prior to Closing, Seller shall promptly advise Buyer thereof in writing, in which event Buyer may terminate this Agreement at any time by notice to Seller, in which event the Deposit shall be disbursed in accordance with Section 3.3.1.

4.13. Taxes, Payments in Lieu of Taxes, and Assessments.

4.13.1. The Property is currently not subject to any state, City, local, or other taxes levied or assessed against the Property, and there will be no assessments of any kind levied on the Property until after Closing. To Seller's Knowledge, except for customary ad valorem taxes that will accrue on the Property after Closing, the sale and purchase of the Property contemplated by this Agreement shall not give rise to any such taxes, payments in lieu of taxes, penalties, interest or assessments with respect to which Buyer may or shall become liable as successor to Seller.

4.13.2. There is currently no proposed increase in the assessed valuation, and there is no proceeding pending for the reduction of the assessed valuation of all or any portion of the Property.

4.13.3. No portion of the Property is subject to or affected by any special assessment, whether or not there is presently a lien thereon.

4.13.4. Notwithstanding anything to the contrary set forth herein, Seller shall pay all state and other taxes (and payments in lieu of taxes) or assessments levied or assessed against the Property and which are due and payable at any time, before or after Closing, that relate to the period ending on the Closing Date.

4.14. Environmental Matters. To Seller's Knowledge, no Hazardous Substances have, during Seller's ownership of the Sale Parcel, been used, generated, treated, stored, released, discharged, or disposed of on all or any portion of the Sale Parcel except as expressly disclosed in the environmental reports (collectively, the "*Environmental Reports*") identified in the Disclosed Information listed in **Exhibit B** to this Agreement. Seller has made available to Buyer copies of all Environmental Reports and other material reports and written information in Seller's possession or control or available to Seller relating to the presence, existence, use, generation, treatment, storage, release, discharge, or disposal of Hazardous Substances in, on or under the Property or any portion thereof. To Seller's Knowledge, except as expressly disclosed in the Environmental Reports, (a) no written notification of release of any Hazardous Substance has been received by Seller, a Seller Affiliate, or a Seller Party, (b) no such notification has been filed as to the Property, (c) no Hazardous Substances are present on, in, or under the Property (including in the groundwater thereunder) that have been discovered by, or reported to, Seller, any Seller Affiliate, or any Seller Party, and (d) the Property has not been the subject of any environmental enforcement action, consent order, voluntary clean-up or other action involving the investigation, monitoring, response and/or remediation of Hazardous Substances at the direction, supervision or order of any applicable Governmental Authority and is not listed or formally proposed for listing on the National Priority List promulgated pursuant to CERCLA or on any state list of hazardous substance sites requiring investigation or clean-up. To Seller's Knowledge, except as may be set forth in the Environmental Reports, no PCB-contaminated, friable asbestos or formaldehyde-based insulation items or underground or aboveground storage tanks are present at the Property. To Seller's Knowledge, except as may be set forth in the Environmental Reports, no activities or occurrences are taking place or have taken place at the Property which might give rise to any basis for any of the foregoing.

4.14.1. As used in this Agreement, the term "*Hazardous Substances*" means and includes any hazardous substance or material which could be detrimental to the physical environment, persons or property, including individually and collectively:

(a) chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, hazardous wastes, hazardous materials, whether solid, liquid or gaseous, including "hazardous materials," "hazardous waste," "toxic waste or substances," and/or "hazardous substances" as defined under:

(i). the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("*CERCLA*"), as amended by the Superfund Amendments and Reauthorizations Act of 1986, 42 U.S.C. Section 11002 et seq. ("*SARA*") and as subsequently amended, now or in the future;

(ii). the Federal Superfund Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("*RCRA*");

(iii). the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq. ("*FWPCA*");

(iv). the Clean Water Act, 33 U.S.C. Section 1321 et seq. ("*Clean Water Act*"); or

(v). any other Environmental Laws; and

(b) any materials, substances, or wastes that are toxic, ignitable, flammable, explosive, corrosive, reactive, carcinogenic, or toxic to the reproductive system, and that are regulated by any local Governmental Authority, any agency of the Commonwealth of Virginia, or any agency of the United States government;

(c) asbestos and asbestos-containing materials;

(d) oil, petroleum, petroleum fractions, petroleum additives, petroleum based products, and petroleum derived substances;

(e) any drilling fluids, produced water or other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources;

(f) urea formaldehyde foam insulation;

(g) lead and lead based paint;

(h) polychlorinated biphenyls (PCBs); and

(i) Freon and other chlorofluorocarbons.

4.14.2. For purposes of this Agreement, the term "*Environmental Laws*" shall mean and include any and all federal, state, or local laws, regulations, codes, statutes, rules, decrees, licenses, permits, approvals or authorizations, ordinances, decisions, orders, judgments, standards, guidelines, or requirements of any Governmental Authority relating to pollution or the environment, including laws and regulations relating to emissions, discharges, releases, migration, generation, storage, handling, disposal, transportation, use, treatment, manufacturing, processing or threatened releases of any Hazardous Substance, all as the same have been and may be from time to time amended, and all regulations adopted and publications promulgated pursuant to or under any such statute, rule, law, or ordinance (including CERCLA, SARA, the Federal Superfund Act, as amended by RCRA, FWPCA, the Clean Water Act, all as the same have been and may be from time to time amended) and all requirements regarding petroleum storage tanks and petroleum storage tank release cleanings.

4.15. No Flood Hazard Area. Except as disclosed by Seller to Buyer, no portion of the Property is located within an area:

4.15.1. designated by any Governmental Authority (on a flood insurance rate map or otherwise) as an "A" zone (High Risk Areas), a "V" zone (High Risk—Coastal Areas), a Special Flood Hazard Area, a floodplain, or a floodway; or

4.15.2. that the provisions of the Flood Disaster Protection Act of 1973 (or regulations promulgated thereunder) would require individuals, businesses, and others buying, building, or improving property located therein within participating communities to purchase flood insurance as a prerequisite for receiving any type of direct or indirect federal financial assistance (e.g., any loan, grant, guaranty, insurance, payment, subsidy, or disaster assistance) when the building or personal property is the subject of or security for such assistance.

4.16. FIRPTA. Seller is not a "foreign person," as defined in Section 1445(f)(3) of the Internal Revenue Code, and, if Seller is a "disregarded entity," as defined in Section 1445-2(6)(2)(iii) of the Internal Revenue Code, then the owner of Seller, similarly, is not a "foreign person," as defined in Section 1445(f)(3) of the Internal Revenue Code.

4.17. Utilities.

4.17.1. (i) All water, sanitary sewer, and other public utilities required for the operation of the Property for the Intended Improvements that are sufficient in size and capacity to serve the Intended Improvements (collectively, the "*Required Utilities*"), and (ii) all electric, gas, telephone, cable, and internet utilities, none of which are furnished by Seller, required for the operation of the Property for the Intended Improvements (collectively, "*Franchise Utilities*") are, or can be, directly connected to the lines and/or other facilities of the respective public authorities or utility companies providing such services or accepting such discharge, either through the Property or through easements or rights of way appurtenant to the Property;

4.17.2. Such easements or rights-of-way have been fully granted, and all charges for such easements or rights-of-way have been fully paid by Seller;

4.17.3. No moratorium, proceeding, or other fact or condition exists or is pending that threatens to impair the furnishing of the Required Utilities to the Property;

4.17.4. Water and sanitary sewer serving the Property are public; and

4.17.5. Buyer shall be responsible for the relocation of any utilities on the Property which is necessitated by Buyer's construction and for connecting to water, storm and sanitary sewer lines currently located in public rights of way. Connection fees and tap fees for such Required Utilities serving the Intended Improvements will be the responsibility of Buyer. The cost of Franchise Utility services for the Property shall be the responsibility of Buyer. In addition, Buyer shall cause all electric, telephone and other utility lines for the Property to be placed underground within public rights of way or utility easements located within the property lines. If the Required Utilities are not located in the public right of way or if the capacity of any of the Required Utilities does not meet the level required for the operation of the Property for the Intended Improvements, Seller agrees to extend or cause the extension of the Required Utilities to

the public rights of way and/or to update or upgrade any insufficient Required Utilities to the necessary level and capacity of operation, at Seller's sole cost and expense, in accordance with Section 6.2.2 below (collectively, the "*Utility Improvement Work*").

4.18. Mechanics' Liens. All contractors, subcontractors, and other persons or entities furnishing work, labor, materials, or supplies in connection with the Property have been paid in full and there are no claims against Seller or all or any portion of the Property in connection therewith. No mechanics', material suppliers', or other liens have been filed against all or any portion of the Property, which have not subsequently been released. No work has been performed or is in progress at, and no materials have been furnished to, all or any portion of the Property that, though not presently the subject of, might give rise to, mechanics', material suppliers', or other liens against all or any portion of the Property. If any lien for work or services performed or materials provided prior to Closing (and not caused by Buyer) is filed before or after Closing hereunder, Seller shall promptly (but not later than the earlier of thirty (30) days of filing or the day immediately preceding the Closing) discharge the same at "No Out-Of-Pocket Expense" to Buyer. As used herein as to any party, the term "*No Out-Of-Pocket Expense*" means that such party shall not be obligated to incur any costs and expenses, except that such party shall pay (A) any overhead or other internal costs incurred by such party arising out of such cooperation or other activity in which such party is to incur No Out-Of-Pocket Expense, and (B) such party's own attorneys' fees and costs incurred for advice and counsel rendered to such party and arising out of such cooperation or other activity in which such party is to incur No Out-Of-Pocket Expense.

4.19. No Environmentally Sensitive Areas; No Historic Areas. To Seller's Knowledge:

4.19.1. Except as disclosed by Seller to Buyer, no portion of the Usable Acreage is located within any area constituting a "wetland" or "other water of the United States" or "waters of the United States" or "waters of the Commonwealth of Virginia," as those terms are defined in the rules and regulations promulgated pursuant to the Clean Water Act, 42 U.S.C. §§1251 et seq. or other applicable Laws, or in a "coastal zone" as defined under Law;

4.19.2. no portion of the Property is designated by any Governmental Authority as an historic district, archeological district, or conservation district; and

4.19.3. no portion of the Property is otherwise restricted by any Governmental Authority or Law due to its physical characteristics (including the temporary or permanent presence thereon of any species protected by any Governmental Authority or Law) or its prior use (including historical uses, such as a burial ground).

4.20. Accuracy. No representation or warranty by Seller contained herein, and no statement or other information contained in any exhibit, certificate, or other instrument furnished or to be furnished to Buyer pursuant hereto or in connection with the transactions contemplated hereunder contains, or at the Closing shall contain, any untrue statement of a material fact or omits or shall omit to state a material fact necessary to make it not misleading.

4.21. No Nondisclosure of Material Adverse Condition. Notwithstanding any limitation that might otherwise be inferred from Sections 4.1 through 4.20 inclusive, Seller hereby specifically represents and warrants that Seller does not know of any facts or circumstances that

materially affect the value or desirability of the Property but which are not known to, or within the reach of diligent attention and observation of, Buyer.

4.22. Survival. All representations of Seller are made as of the Effective Date and shall be deemed remade at Closing, shall not merge into the "Deed" (defined in Section 9.2.1), and shall survive the Closing and the delivery and recording of the Deed for one (1) year ("*Survival Period*").

5. **Covenants, Representations, and Warranties of Buyer**. As used in this Agreement, "*Buyer's Knowledge*" means the actual knowledge of facts or other relevant information by Annette Banks (the "*Buyer's Representative*"), without any duty to further investigate or inquire; however, Buyer's Representative shall not have any personal liability whatsoever for the representations and warranties made herein or for any other matters relating to this Agreement. Buyer covenants, represents and warrants to Seller as follows:

5.1. Organization; Authorization. Buyer is a limited liability company duly organized and validly existing under the laws of the State of North Carolina, and prior to Closing will be duly qualified to do business in the Commonwealth of Virginia. Subject to receipt of the "Internal Approvals" (defined in Section 6.1.2), the execution and delivery of this Agreement and the performance by Buyer of its obligations under this Agreement have been duly authorized by all requisite corporate action, and this Agreement has been executed by all persons and entities necessary in order for Buyer to execute, deliver, and perform this Agreement and all other transaction documents contemplated herein. Except for the Internal Approvals, "Buyer's External Approvals" (defined in Section 14.1), and as otherwise set forth in this Agreement, the execution, delivery, and performance by Buyer of this Agreement and all other transaction documents contemplated herein to which Buyer is a party do not require consent or approval from, or any filing or registration with, any Governmental Authority or any other person.

5.2. Enforceability. This Agreement is the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, and there are no claims, defenses (personal or otherwise), or offsets to the validity of or enforceability against Buyer of this Agreement or any of the documents to be delivered pursuant to this Agreement.

5.3. No Breach. The execution and delivery of this Agreement, the consummation of the transactions provided for in this Agreement and the fulfillment of the terms of this Agreement will not result in a breach of any of the terms or provisions of, or constitute a default or an acceleration under any agreement to which Buyer is a party or by which Buyer is bound or materially affected, or any judgment, writ, trust, decree, or order of any Governmental Authority, or any applicable Laws.

5.4. Survival. All representations of Buyer are made as of the Effective Date and shall be deemed remade at Closing, shall not merge into the Deed, and shall survive the Closing and the delivery and recording of the Deed for the Survival Period.

6. **Conditions Precedent to Buyer's Obligations**. All of Buyer's obligations hereunder are expressly conditioned on the satisfaction, at or before the time of Closing hereunder or at or before such earlier time as may be expressly stated below, of each of the following conditions ("*Buyer's*

Conditions") (any one or more of which Buyer's Conditions may be waived in writing in whole or in part by Buyer, at Buyer's option):

6.1. Conditions to be Satisfied on or before Due Diligence Period End Date: For purposes of this Agreement, "*Due Diligence Period*") means the period of time commencing on the Effective Date and ending at 5:00 p.m., local time in the City, on November 30, 2016 (the "*Due Diligence Period End Date*"). On or before 5:00 p.m., local time in the City, on the Due Diligence Period End Date or such earlier time as may be expressly stated below:

6.1.1. Buyer may terminate this Agreement, in Buyer's sole discretion and for any reason or for no reason at all, by written notice delivered to Seller with a copy to the Title Insurer, on any business day within five (5) business days after the Due Diligence Period End Date;

6.1.2. Buyer shall be in receipt of "Approvals Evidence" of the written approval of this Agreement and all transactions contemplated therein by Buyer's board of directors (the "*Internal Approvals*"). For purposes of this Agreement, "Approvals Evidence" shall not be considered to have been "obtained" unless and until Buyer has received written evidence that such approval has been issued or such agreement has been fully executed and delivered to Buyer, and such issuance or execution and delivery is not subject to appeal, or, if appealed, such appeal has been successfully and finally resolved in favor of Buyer, and is not subject to any further appeal or other challenge (collectively, the "*Approvals Evidence*");

6.1.3. Seller and Buyer shall have approved in writing:

(a) the Survey; and

(b) the legal description of the Sale Parcel.

6.1.4. Each of Seller and Buyer shall have approved, in writing, the form of an agreement (the "*Post-Closing Agreement*"), to be entered into between Seller and Buyer at Closing and which shall not be recorded, pursuant to which Buyer will grant Seller a right to repurchase the Property if:

(a) Buyer does not cause "Commencement of Construction" to occur within three (3) years after the "Closing Date" (defined in Section 9.1), subject to "Permitted Delays;"

(b) Buyer does not cause "Substantial Completion of Construction" to occur within eighteen (18) months after Commencement of Construction, subject to "Permitted Delays"; or

(c) Buyer does not open the Intended Improvements for business within six (6) months after Substantial Completion of Constuction, subject to "Permitted Delays".

In the case of Section 6.1.4(a) or 6.1.4(b) above, the Post-Closing Agreement shall provide that any purchase of the Property by Seller shall occur for a purchase price that reimburses Buyer for

the Purchase Price hereunder. In the case of Section 6.1.4(c), Seller shall pay to Buyer the greater of (a) the market value of the Property as determined by the median appraised value of appraisals obtained by Buyer, Seller, and a mutually-agreed upon third party MAI certified appraiser, or (b) the sum of 110% of the unamortized book value of the Intended Improvements actually constructed and the Purchase Price. Additionally, for purposes of the Post-Closing Agreement, the following definitions shall apply:

(i). "Commencement of Construction" means the commencement of physical work of a significant nature on the construction of the Intended Improvements on the Property, such as commencement of a building foundation;

(ii). "Substantial Completion of Construction" means the sooner to occur of (x) completion of the initial construction of the Intended Improvements on the Property to that stage when the Intended Improvements are sufficiently complete so that Buyer can occupy or utilize the Intended Improvements and (y) Buyer's receipt of a Certificate of Occupancy for the Intended Improvements; and

(iii). "Permitted Delays" means any delay in any performance required under the Post-Closing Agreement by reason of strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, civil commotion, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls in the nature of emergency orders or moratorium, inability to obtain any material or service, Acts of God, or other reason of like nature not the fault of the party delayed in performing work or doing acts.

6.1.5. Seller shall have prepared a plat (the "*Subdivision Plat*") subdividing the City's property to create the Lake Buffer Parcel and the Sale Parcel, including an access easement across the Sale Parcel for the benefit of the Lake Buffer Parcel at a location mutually agreeable to the Buyer and Seller. The Subdivision Plat shall be prepared and recorded by Seller at Seller's sole expense prior to the Due Diligence Period End Date.

6.1.6. Buyer and Seller shall have approved in writing the form of an agreement to permit the installation and maintenance of stormwater outflow pipes on the Sale Parcel and the Lake Buffer Parcel as required by the site plan for the Intended Improvements ("*Stormwater Agreement*").

6.1.7. Buyer and Seller shall have approved in writing the form of an agreement permitting Buyer to conduct landscaping activities on the Lake Buffer Parcel, which agreement shall be subject to the approval of the Director of City's Department of Utilities ("*Lake Buffer Parcel Landscaping Agreement*").

6.1.8. If required by Escrow Agent, and in addition to Seller's efforts prior to the Effective Date, Seller shall have executed any additional documents, or shall have obtained any necessary additional signatures from third parties, required by Escrow Agent to remove from the Title Report (i) the restrictive covenant set forth in that certain Declaration of Restrictive Covenant dated June 21, 1990 and recorded in the Clerk's Office of the Circuit Court of the City of Norfolk in Deed Book 2266 at page 295, and (ii) the restrictive covenant set forth in that certain Declaration of Restrictive Covenant dated Novemebr 10, 1992 and recoded in the Clerk's Office in Deed Book 2446 at page 579 (together, the "*Restrictive Covenants*").

6.1.9. Buyer shall not have given notice of termination pursuant to Section 4.12 (Litigation), Section 6.3.5 (Title), Section 12.1 (Condemnation), Section 13.2 (Default by Seller), Section 14.2 (Title Commitment and Survey), or any other applicable provision under which Buyer has the right to terminate this Agreement on or before the Due Diligence Period End Date.

6.1.10. Seller have provided Buyer with all other documents necessary or reasonably desirable to effect the transaction contemplated herein;

6.1.11. If any one or more of the conditions described in Section 6.1.1, Section 6.1.2, and Section 6.1.3, are not met by the Due Diligence Period End Date, or if any of Buyer's other termination rights described in any of the provisions referred to in Section 6.1.4 or elsewhere in this Agreement become applicable at any time during the Due Diligence Period, then Buyer may terminate this Agreement, in Buyer's sole discretion and for any reason or for no reason at all, by written notice delivered to Seller with a copy to the Title Insurer, within five (5) business days after the Due Diligence Period End Date, in which event the Deposit shall be disbursed to Buyer in accordance with Section 3.3.1.

6.2. Conditions to be Satisfied on or before the External Approvals Deadline: On or before 5:00 p.m., local time in Norfolk, Virginia, the date that is the eighteenth (18th) monthly anniversary of the Due Diligence Period End Date, as the same may be extended (the "*External Approvals Deadline*") the "Buyer's External Approvals Condition" (defined in Section 14.1) shall have been satisfied;

6.2.2. Seller, at its sole expense, shall have completed the Utility Improvement Work so that all Required Utilities shall exist in the public rights of way adjacent to the Property in sufficient size and capacity to serve the Intended Improvements;

6.2.3. Seller shall have completed the Pre-Development Activities (defined herein) to Buyer's reasonable satisfaction;

6.2.4. Seller shall have completed the Traffic Improvements (defined herein) to Buyer's reasonable satisfaction;

6.2.5. Seller shall be completed all requisite action necessary to execute and deliver the Grant Agreement (defined in Section 8.1.2);

6.2.6. Seller, at its sole expense, shall have provided Buyer with Approvals Evidence that a sign overlay district has been established by the Seller at the Property that will

permit the Navigation Sign and other signage as Buyer may reasonably require for the Intended Improvements;

6.2.7. Subject to Buyer having obtained, at Buyer's sole cost and expense, a traffic study justifying the same, Seller, at its sole expense, shall have provided Buyer with Approvals Evidence that Seller has obtained a variance, waiver, or other action from the Governmental Authorities legally allowing Buyer's desired configuration of parking and number of parking spaces;

6.2.8. Seller, at its sole expense, shall have provided Buyer with Approvals Evidence that Seller has obtained a variance, waiver, or other action from the Governmental Authorities to allow Buyer to construct the Intended Improvements with reduced landscaping requirements;

6.2.9. Seller shall have delivered to Buyer Approvals Evidence for the installation of directional signs to the Intended Improvements to be installed in the public right-of-way of Northampton Boulevard in the proximity of Interstate 64 and Military Highway; and

6.2.10. Buyer shall not have given notice of termination pursuant to Section 4.12 (Litigation), Section 6.3.5 (Title), Section 12.1 (Condemnation), Section 13.2 (Default by Seller), Section 14.2 (Title Commitment and Survey), or any other applicable provision under which Buyer has the right to terminate this Agreement on or before the External Approvals Deadline.

6.2.11. If any of the conditions described above is not met by the External Approvals Deadline, or if any of Buyer's other termination rights described in any of the provisions referred to in Section 6.2.1 become applicable at any time on or before the External Approvals Deadline, then Buyer may terminate this Agreement, in Buyer's sole discretion and for any reason or for no reason at all, by written notice delivered to Seller with a copy to the Title Insurer, on any business day prior to and including the External Approvals Deadline, in which event the Deposit shall be disbursed to Buyer in accordance with Section 3.3.1.

6.3. Conditions to be Satisfied on the Closing Date:

6.3.1. No Termination. Buyer shall not have given notice of termination pursuant to any applicable provision under which Buyer has the right to terminate this Agreement.

6.3.2. Accuracy of Representations. All of the covenants, representations, and warranties of Seller contained in this Agreement shall have been true and correct in all material respects when made, and shall be true and correct in all material respects on the Closing Date, with the same effect as if made on and as of such Closing Date.

6.3.3. Performance. Seller shall have performed, complied with, and observed, in all material respects, all covenants, agreements, and conditions required by this Agreement to be performed, complied with, and observed on Seller's part prior to or as of Closing hereunder, all as set forth herein generally and particularly in Section 8.

6.3.4. Documents and Deliveries. All instruments and documents required on Seller's part to effect this Agreement and the transactions contemplated hereby, all as set forth

herein generally and particularly in Section 9.2, shall be delivered to Buyer or the Title Insurer, as applicable, and shall be in form and substance consistent with the requirements herein and otherwise reasonably satisfactory to Buyer and its counsel.

6.3.5. Title. At Closing, Seller, at its expense, shall deliver to Buyer good and marketable indefeasible fee simple title to the Property by special warranty deed (the "*Deed*"), free and clear of all liens, judgments, tenancies, and/or encumbrances of any kind whatsoever, subject only to the Permitted Title Exceptions and any other matters approved in writing by Buyer ("*Approved Conditions of Title*"). Buyer's obligation to complete Closing shall be conditioned upon the occurrence of the following events (the occurrence of such events, collectively, "*Acceptable Title Condition*"):

(a) the Title Insurer shall be irrevocably committed to issue to Buyer, at Buyer's sole cost and expense, an ALTA Owner's Policy of Title Insurance in the amount of the Purchase Price, dated the date of the Closing ("*Owner's Title Policy*"), insuring that title to the Property is vested in Buyer in fee simple upon the Closing Date, subject only to the Approved Conditions of Title;

(b) the Owner's Title Policy shall include:

(i). insurance of appurtenant easements;

(ii). a 9.1-06 endorsement (Restrictions, Encroachments and Minerals Endorsement);

(iii). an endorsement amending the survey exception except as to "shortages in area"; and

(iv). such other endorsements thereto as Buyer may request;

(c) the Owner's Title Policy shall show that the Property is free and clear of all mortgages, liens, claims, judgments, encumbrances, ground rents, leases, tenancies, licenses, security interests, covenants, conditions, restrictions, rights of way, easements, encroachments, and any other matters affecting title, except only the Permitted Title Exceptions, at standard rates; and

(d) no default or breach shall exist under any of the covenants, conditions, restrictions, rights-of-way, or easements, if any, affecting all or any portion of the Property.

Any instrument or deposit required to remove or discharge an objection to, or defect in, marketability of title, or to indicate the terms and amount of any mortgage or other lien on the Property, shall be in such form, terms, conditions, and amount, and be made in such manner as may reasonably be required by the Title Insurer to examine and insure title in order to satisfy the Title Insurer sufficiently to either to certify the said facts and/or omit any exception to title and/or guarantee to Buyer against collection of any item out of the Property. If Seller fails to deliver the

Property in Acceptable Title Condition, then Buyer may terminate this Agreement and receive a refund of the Deposit, in which event the Deposit shall be disbursed in accordance with Section 3.3.1. The cost of Owner's Title Policy shall be paid in accordance with Section 6.3.5(a).

6.3.6. Material Adverse Change. Between the date hereof and the date of Closing, there shall have been no material adverse change in the condition of the Property.

7. **Conditions Precedent to Seller's Obligations**. All of Seller's obligations hereunder are expressly conditioned on the satisfaction at or before the time of Closing hereunder of each of the following conditions (any one or more of which may be waived in writing in whole or in part by Seller, at Seller's option):

7.1. Accuracy of Representations. All of the representations and warranties of Buyer contained in this Agreement shall have been true and correct in all material respects when made, and shall be true and correct in all material respects on the Closing Date with the same effect as if made on and as of such date.

7.2. Performance. Buyer shall have performed, complied with, and observed, in all material respects, all covenants, agreements, and conditions required by this Agreement to be performed, complied with, and observed on Buyer's part prior to or as of Closing hereunder.

7.3. Documents and Deliveries. All instruments and documents required on Buyer's part to effect this Agreement and the transactions contemplated hereby, all as set forth herein generally and particularly in Section 9.3, shall be delivered to Seller or the Title Insurer, as applicable, and shall be in form and substance consistent with the requirements herein and otherwise reasonably satisfactory to Seller and its counsel.

7.4. No Termination by Buyer. Buyer shall not have given timely notice of termination of this Agreement pursuant to any provision of this Agreement providing for such right of termination.

8. **Certain Covenants Pending Closing**.

8.1. During the period of time commencing on the Effective Date and expiring on the External Approvals Deadline (the "*External Approvals Period*"), subject to Buyer's termination rights hereunder, Buyer shall use reasonable efforts to obtain Approvals Evidence of:

8.1.1. Buyer's design, construction, development, ownership, operation, and use on the Property of the Intended Improvements;

8.1.2. such local, City, state, and federal contributions toward the construction and operation of the Intended Improvements (the "*Incentives*") as are deemed necessary and appropriate by Buyer, including the entering into at Closing of a Grant Agreement between the Economic Development Authority of the City of Norfolk and Buyer in materially the same form attached hereto as **Exhibit A**

Parcel Plan And Legal Description Of Sale Parcel

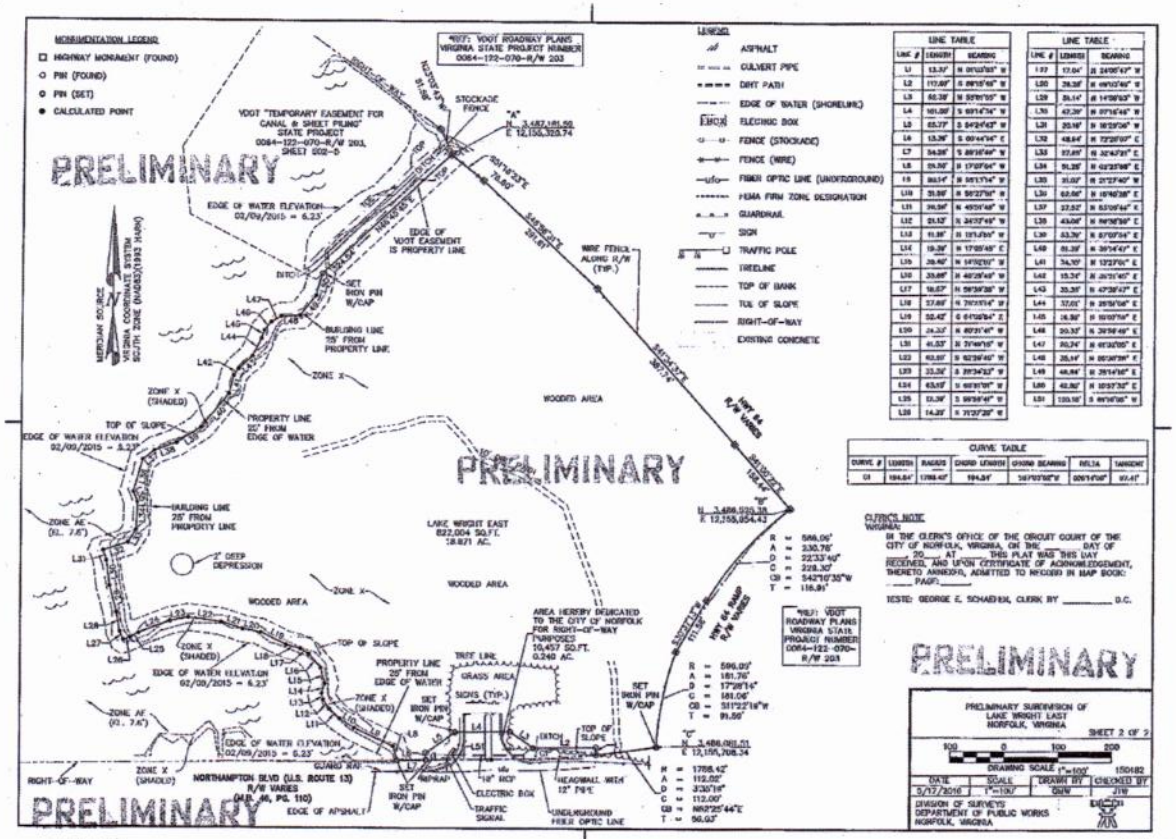

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Exhibit B
Disclosed Information

1. Preliminary Jurisdictional Determination Letter Dated 8/4/2015

2. NEDA Lake Wright East, Norfolk Wetlands Delineation Letter Dated 2/5/2007

3. Lake Wright East Traffic Impact Analysis Dated 1/11/2007

4. Report Of Preliminary Subsurface Exploration And Geotechnical Engineering Evaluation Dated 10/24/2006

Exhibit C
Traffic Development Plan

8.1.3. **Exhibit D** (the "*Grant Agreement*"), which Seller acknowledges may bear a different "Grantee" upon assignment under Section 18.1; and

8.1.4. the completion by Seller, at Seller's sole expense, of (a) any investigation, response, remediation plan, or remediation required by any Governmental Authority related in any way to Hazardous Substances located on, or in connection with, all or any portion of the Property, and (b) any relocation and/or removal of any wetlands from the Property that may be impacted by the development of the Intended Improvements within the Property (including both on-site and off-site mitigation required by any Governmental Authority) to include, without limitation, applications, surveying, permitting, regulatory and third party approvals and all on-site and off-site work necessary or required to address and/or mitigate potential wetlands impacts within the Property so that Buyer can construct the Intended Improvements after Closing without delay (collectively, the "*Pre-Development Activities*").

8.2. During the External Approvals Period, Seller shall use its best efforts to obtain Approvals Evidence of the External Approvals of:

8.2.1. permits and written commitments for timely funding, entitlements, and completion (without any financial contribution or other assessment from Buyer) by the applicable Governmental Authorities of all traffic improvements necessary for construction, development, ownership, operation, and use of the Intended Improvements, including the extension of the off-ramp from Interstate 64 southbound to extend to the westbound lanes Northampton Boulevard to allow access to the Property via a new traffic signal, median break, and left-hand turn in the approximate configuration as depicted as the "PROPOSED FUTURE TRAFFIC SIGNAL" and the "PROPOSED FUTURE TURN LANES" on the Development Plan attached hereto as **Exhibit C** or as otherwise approved by Buyer (the "*Traffic Improvements*"), which Seller acknowledges are important for the public health, safety and welfare in addition to the operation of the Intended Improvements; and

8.2.2. the Incentives.

8.3. During the External Approvals Period, Seller shall cooperate with, and use its commercially reasonable efforts to assist, Buyer in Buyer's efforts to obtain Approvals Evidence of the External Approvals of:

8.3.1. Buyer's design, construction, development, ownership, operation, and use on the Property of the Intended Improvements (including Seller expediting review and approval processes related to Buyer's site development and construction plan submissions);

8.3.2. the Subdivision Plat; and

8.3.3. the Pre-Development Activities.

8.4. During the period commencing on the Effective Date and ending upon the earliest to occur of (a) Closing, (b) the termination of this Agreement, or (c) the expiration of this Agreement, Seller shall not sell, lease, or otherwise transfer all or any portion of, or any interest in, the Property to any party other than Buyer (or agree to sell, lease, or otherwise transfer, or enter into negotiations toward any sale, lease, or other transfer), nor shall Seller in any material manner

alter the condition of the Property, including the removal therefrom of materials, personal property, buildings, improvements, or soil or other ground conditions.

8.5. Between the Effective Date of this Agreement and the Closing Date, Seller shall comply in all material respects with all applicable Laws affecting the Property, and duly and timely file all tax reports (or other applicable documentation in connection with payments in lieu of taxes) required to be filed by Seller and pay (or cause to be paid) prior to delinquency all taxes (and payments in lieu of taxes) and assessments, charges, fees, interest, and penalties levied on the Property.

8.6. Subject to the terms and conditions contained herein, Seller hereby grants to Buyer and Buyer's representatives, agents, employees, engineers, consultants, invitees, contractors, and subcontractors (collectively, the "*Inspectors*") a license to enter upon the Property and all other non-riparian real property owned or controlled by Seller or its affiliates and necessary or convenient to afford access to the Property (collectively, the "*Seller's Entry Parcels*") and to conduct such studies, examinations, and tests (including test borings) of Seller's Entry Parcels as may be reasonably required by Buyer to determine the suitability of the Property (and any applicable portions of Seller's Entry Parcels) for Buyer's purposes (collectively, the "*Inspections*"), including boundary surveys, environmental audits, soils tests, engineering inspections, and inquiries of appropriate Governmental Authorities with respect to, among other things, zoning, land use, parking, construction, and Environmental Law. Any such Inspections shall be at No Out-Of-Pocket Expense to Seller.

8.6.1. The license granted by this Section 8.6 shall be effective during the period commencing on the Effective Date and ending upon the earliest to occur of (a) Closing, (b) the termination of this Agreement, or (c) the expiration of this Agreement.

8.6.2. Buyer shall promptly repair any damage to Seller's Entry Parcels attributable to the conduct of the Inspections, and shall promptly return such portions of Seller's Entry Parcels as have been damaged by the Inspections to substantially the same condition as existed prior to the conduct thereof. Notwithstanding anything to the contrary as contained in this Section 8.6, all inspections performed pursuant to the license granted in this Section 8.6 shall be performed in a manner that does not materially interfere with the use, operation, or enjoyment of Seller's Entry Parcels, or materially interfere with the rights of any tenants on Seller's Entry Parcels.

8.6.3. Except to the extent that any of the same shall be caused by the negligence or misconduct of Seller, its agents, employees, or contractors, Buyer shall indemnify, defend, and hold harmless Seller ("*Indemnified Party*") by, from, and against any and all claims, demands, losses, judgments, liabilities, damages, and costs or expenses, including reasonable attorney's fees, investigative and discovery costs, court costs, and all other sums ("*Indemnified Costs*") that the Indemnified Party may pay, or become obligated to pay, on account of any claim or assertion of liability for personal injury or property damage arising or alleged to have arisen out of any act or omission of the Inspectors in connection with the entry onto Seller's Entry Parcels. Notwithstanding the foregoing, Buyer shall in no event be obligated to indemnify, defend, or hold any Indemnified Party harmless by, from, or against any Indemnified Costs that relate to or arise out of (a) the existing environmental condition of Seller's Entry Parcels, including any requirement to investigate, respond to, or remediate any existing environmental condition (whether known,

unknown, or otherwise) or any liability or claim that subjects Seller or any other party to any liability with respect to any such existing environmental condition of all or any portion of Seller's Entry Parcels; or (b) non-compliance of all or any portion of Seller's Entry Parcels with any applicable Laws. Nothing herein shall be construed to authorize Buyer or any Inspectors to subject all or any portion of Seller's Entry Parcels to any mechanics or similar liens arising out of the Inspections. Buyer shall carry commercial general liability insurance covering all activities conducted by Buyer and the Inspectors on Seller's Entry Parcels. Such insurance shall have limits of not less than ONE MILLION AND NO/100 DOLLARS ($1,000,000.00) for personal injury to or death of any one person, TWO MILLION AND NO/100 DOLLARS ($2,000,000.00) for personal injury to or death of any number of persons in any one accident, and ONE MILLION AND NO/100 DOLLARS ($1,000,000.00) for property damage, and shall name Seller as an additional insured. Prior to any entry onto Seller's Entry Parcels by Buyer or its agents or representatives, and as a condition to Buyer's right to enter onto Seller's Entry Parcels, Buyer shall provide proof of such insurance to Seller.

8.6.4. The information, studies, and reports gathered by Buyer pursuant to this Section 8.6 (the "*Entry Information*") are confidential and are intended solely for the limited use and benefit of Buyer for the purpose of determining whether Buyer has any further interest in the acquisition of the Property. The Entry Information shall not be used by Buyer or any recipients other than in connection with evaluating the suitability of the Property for Buyer's purposes. Moreover, except as may be required by Law, Buyer agrees to reveal the Entry Information only to those recipients who need to know such Entry Information for the purpose of evaluating the suitability of the Property for Buyer's purposes, and to no other recipients. Notwithstanding any provision in this Agreement to the contrary, except as otherwise required by Law, neither Buyer nor Buyer's agents shall contact any Governmental Authority regarding Buyer's discovery of any Hazardous Substances on, or any environmental conditions at, the Property without Seller's prior written consent thereto, subject to requirements of applicable Laws and disclosures made in connection with the Approved Wetlands Mitigation.

8.7. At all reasonable times prior to Closing (including times following the Due Diligence Period), Seller shall permit Buyer and Buyer's engineers, consultants, attorneys, accountants, agents, and other representatives, as well as Buyer's prospective lenders and contractors:

8.7.1. to make investigations with regard to zoning and building code requirements, general feasibility of the Intended Improvements, the geotechnical and environmental condition of the Property, and other matters that Buyer deems necessary in the exercise of due diligence; and

8.7.2. to make applications for Buyer's External Approvals and any other approvals and permits deemed necessary by Buyer. Seller shall promptly cooperate with Buyer and execute applications and other documents required for Buyer to obtain such approvals and permits or other authorizations, and Seller hereby authorizes Buyer to make, in Seller's name, Buyer's name, or both, any such applications as Buyer considers advisable.

8.8. Between the Effective Date of this Agreement and the Closing Date, Seller shall promptly notify Buyer of any material change in any condition with respect to the Property, or any

event or circumstance to Seller's Knowledge that makes any representation or warranty of Seller to Buyer under this Agreement materially untrue or misleading. In addition, promptly after receipt thereof by Seller, Seller shall hereafter deliver to Buyer the following:

8.8.1. a copy of any bill, notice, or statement of value, or notice of change in a tax rate affecting or relating to the Property, that relates to taxes or payments in lieu of taxes;

8.8.2. a copy of any written notice of an actual or alleged violation of any Laws affecting or relating to the Property; and

8.8.3. a copy of any written notice of a casualty or Condemnation affecting or relating to the Property.

9. Closing; Deliveries.

9.1. Conveyance of title and payment of the Purchase Price under this Agreement (the "*Closing*") shall occur at 10:00 a.m., local time in Norfolk, Virginia, through closing escrow arrangements reasonably acceptable to Buyer and Seller by delivery of documents and funds to the Title Insurer on or before the date (the "*Closing Date*") that is thirty (30) days after date of satisfaction or written waiver of the last of Buyer's Conditions set forth in Section 6.1 and Section 6.2 and Seller's conditions in Section 7; *provided however*, that Buyer may accelerate the Closing Date at any time to a date that is no earlier than twenty (20) days after notice from Buyer to Seller. Notwithstanding the provisions of this Section 9.1, there shall be no requirement that Seller and Buyer physically attend the Closing, and all funds and documents to be delivered at the Closing may be delivered to the Title Insurer unless the parties hereto mutually agree otherwise. Buyer and Seller hereby authorize their respective attorneys to execute and deliver to the Title Insurer any additional or supplementary instructions as may be necessary or convenient to implement the terms of this Agreement and facilitate the closing of the transactions contemplated hereby, provided that such instructions are consistent with and merely supplement this Agreement and shall not in any way modify, amend, or supersede this Agreement.

9.2. At Closing, Seller shall deliver to the Title Insurer the following:

9.2.1. the Deed, executed and acknowledged by Seller and in proper form for recording in Norfolk, Virginia, so as to convey to Buyer title in fee simple to the Property, subject to the Permitted Title Exceptions with all local, state, municipal and other documentary stamp, deed or other document transfer taxes having been paid by Seller;

9.2.2. the Grant Agreement executed by the Economic Development Authority of the City of Norfolk and any other documentation necessary to unconditionally implement the Incentives;

9.2.3. the Post-Closing Agreement executed by Seller;

9.2.4. the Lake Buffer Parcel Landscaping Agreement executed by Seller;

9.2.5. the Stormwater Agreement executed by Seller;

9.2.6. all documents (if any) required in connection with the payment of any and all real estate transfer taxes or fees, duly executed by Seller and in proper form for submission to the City, with the Deed;

9.2.7. if applicable, copies of each bill for current real estate and ad valorem taxes (or payments in lieu of taxes) due and payable with respect to the Property, together with proof of payment thereof (to the extent the same have been paid);

9.2.8. if required by Title Insurer, a Foreign Investors Real Property Tax Act Certification and Affidavit in customary form ("*FIRPTA Certificate*") by Seller (or by Seller's owner, if Seller is a "disregarded entity" as defined in Section 1445-2(6)(2)(iii) of the Internal Revenue Code;

9.2.9. an affidavit as to possession of the Property, payment for all services and improvements provided to the Property and any other information reasonably required by the Title Insurer to issue Buyer's Owner's Title Policy without exception to matters customarily addressed by an owner's affidavit, substantially in the form attached hereto as **Exhibit E**;

9.2.10. copies of any and all resolutions of actions of Seller, or Seller's City Council, authorizing the transaction contemplated hereby and the execution and delivery of the Deed and all other documents required at Closing;

9.2.11. an instrument ("*Seller's Representation Certificate*") pursuant to which Seller remakes the representations made by Seller with respect to the Property pursuant to Section 4 above as of the Closing Date;

9.2.12. assignments in form and substance reasonably acceptable to both Seller and Buyer, sufficient to convey all right, title, and interest in and to any Development Rights and Contract Rights to be assigned hereunder, if applicable;

9.2.13. all applicable transfer tax form(s), affidavit(s), and/or declaration(s) required by any applicable Laws and/or Governmental Authorities with respect to the transfer of title to the Property, including any city, State, or other local transfer tax form, affidavit, or declaration, to the extent such forms, if not currently required by Law, may become requirements between the Effective Date hereof and the Closing Date;

9.2.14. immediately available funds in the amount of any and all applicable transfer taxes;

9.2.15. all other instruments and documents reasonably required by the Title Insurer to effectuate this Agreement and the transactions contemplated thereby, which shall have been executed and delivered by all necessary parties other than Buyer; and

9.2.16. Seller shall reimburse Buyer for the cost of the Survey in immediately available funds, which shall be paid from the proceeds due to Seller at Closing.

9.3. At Closing, Buyer shall deliver to the Title Insurer:

9.3.1. a wire transfer of immediately available funds for the balance of the Purchase Price, subject to adjustments as provided in this Agreement, and payable to or transferred to the Title Insurer, with instructions to the Title Insurer to pay and transfer the same to the order or account of Seller or to such other persons as Seller shall designate in writing;

9.3.2. the Grant Agreement executed by Buyer;

9.3.3. the Post-Closing Agreement executed by Buyer;

9.3.4. the Lake Buffer Parcel Landscaping Agreement executed by Buyer;

9.3.5. the Stormwater Agreement executed by Buyer;

9.3.6. all documents (if any) required in connection with the payment of any and all real estate transfer taxes or fees by Seller, duly executed by Buyer and in proper form for submission to the City, with the Deed; and

9.3.7. all other instruments and documents reasonably required by the Title Insurer to effectuate this Agreement and the transactions contemplated thereby, which shall have been executed and delivered by all necessary parties other than Seller.

9.4. Upon Closing, the Title Insurer shall promptly undertake all of the following in the manner indicated:

9.4.1. Prorate all matters referenced in Section 11 based upon the statement delivered into escrow signed by the parties;

9.4.2. Cause to be recorded with the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, the Deed, and any other documents that the parties hereto may mutually direct, and send copies of Deed with the City Clerk's filing notation set forth thereon, to Buyer's counsel as and when the same are received by the Title Insurer;

9.4.3. Disburse from funds deposited by Buyer with the Title Insurer towards payment of all items chargeable to the account of Buyer pursuant hereto in payment of such costs, including the payment and transfer of the Purchase Price to Seller, and disburse the balance of such funds, if any, to Buyer;

9.4.4. Issue, or irrevocably, unconditionally, and unqualifiedly agree in writing to issue, the Owner's Title Policy to Buyer;

9.4.5. Deliver to Buyer the FIRPTA Certificate (if required), the Grant Agreement, and any other documents to be delivered to Buyer hereunder; and

9.4.6. Deliver to Seller any other documents to be delivered to Seller hereunder.

9.5. Notwithstanding anything to the contrary set forth herein, if all conditions to Closing have otherwise been satisfied hereunder, then Buyer may elect, by notice to Seller, to defer Closing until the Pre-Development Activities have been completed, but in no event later than June 30, 2018.

10. **No Liabilities; No Assumption of Contract Obligations**. Buyer shall not assume or take subject to any "New Encumbrances" or "Monetary Liens" (as both terms are defined in Section 14.2.4 below) or any other liabilities or obligations of the Property or Seller existing or accrued as of the date of Closing with the exception of the Permitted Title Exceptions, and Seller shall pay the same (other than the Permitted Title Exceptions) as they mature and shall hold Buyer harmless with respect to same. Except as otherwise set forth in this Agreement liabilities and obligations of the Property accruing after the date of Closing shall be the responsibility of Buyer or the Property, as the case may be.

11. **Apportionments; Expenses**.

11.1. Apportionment. All income and all expenses and obligations relating to the operation of the Property shall be prorated between Buyer and Seller as of midnight of the day preceding the date of Closing. Real property taxes and payments in lieu of taxes and assessments on the Property shall be prorated so that Seller is responsible for all such taxes and payments in lieu of taxes and assessments for the fiscal years occurring prior to the Current Tax Period. The phrase "*Current Tax Period*" refers to the fiscal year of the applicable taxing authority in which the Closing occurs. In the event that as of the Closing, the actual tax bills (or bills for payments in lieu of taxes) for the Current Tax Period in question are not available and the amount of taxes and payments in lieu of taxes to be prorated as aforesaid cannot be ascertained, then rates and assessed valuation of the previous fiscal year, with known changes, shall be used, and when the actual amount of taxes and payments in lieu of taxes and assessments for the Current Tax Period in question shall be determinable, then such taxes and payments in lieu of taxes and assessments will be re-prorated between the parties to reflect the actual amount of such taxes and payments in lieu of taxes and assessments. If, on the date of Closing, the Property shall be affected by any special assessment, then all installments of such assessment due and payable on or prior to the Closing Date shall be paid and discharged by Seller prior to or at Closing, and any remaining installments shall constitute Permitted Title Exceptions and shall be assumed by Buyer. Notwithstanding anything to the contrary contained in this Agreement, real property taxes and payments in lieu of taxes and assessments on the Property shall be further prorated so that Buyer is responsible for only the percentage that the number of acres of the Property bears to the total number of acres of the Sale Parcel.

11.2. Expenses. Except as otherwise expressly set forth in this Agreement, each party shall pay all its own expenses incurred in connection with this Agreement and the transactions contemplated hereby, including (a) all costs and expenses stated herein to be borne by a party, and (b) all of their respective accounting, legal, and appraisal fees. Seller represents and warrants that Seller is exempt from payment of the Virginia Grantor Tax and similar transfer taxes imposed on sellers of real estate in the Commonwealth of Virginia. In addition to its other expenses, Seller shall pay for all costs and expenses of preparing, executing and recording any corrective instruments or actions and the preparation of the closing documents. In addition to its other expenses, Buyer shall pay the State Grantee Tax, the Local Grantee Tax and the recording fees in

connection with the transfer of the Property and recording of the Deed. Buyer shall pay the Title Insurer's customary charges to buyers and sellers for drafting documents and miscellaneous charges. Buyer shall also pay all escrow and closing fees charged by Title Insurer to hold the Deposit and coordinate the Closing.

12. **Condemnation**.

12.1. If at any time prior to the expiration of the Due Diligence Period, a Condemnation of all or any portion of the Property occurs, then Buyer may, on or before the later of (a) the Due Diligence Period End Date, or (b) the date that is forty-five (45) days after Buyer's receipt of written notice from Seller of such Condemnation, terminate this Agreement by written notice to Seller with a copy to the Title Insurer, in which event the Deposit shall be disbursed to Buyer in accordance with Section 3.3.1, and, thereafter, this Agreement shall be null and void and neither party shall have any other claim against the other under this Agreement, nor any other legal or equitable cause of action against the other. Seller shall give Buyer written notice of any actual or threatened taking within fifteen (15) business days after Seller's receipt of written notice of any such actual or threatened taking, and, in any event, prior to Closing.

12.2. If a Condemnation occurs at any time after the expiration of the Due Diligence Period but prior to Closing, then Buyer shall have the option to adjourn the Closing for a period of forty-five (45) days after the date Seller notifies Buyer in writing of such condemnation, and:

12.2.1. Buyer may terminate this Agreement by written notice to Seller with a copy to the Title Insurer, given not later than forty-five (45) days after the date Seller notifies Buyer in writing of such Condemnation. If this Agreement is terminated pursuant to this Section 12.2.1, then the Deposit shall be disbursed to Buyer in accordance with Section 3.3.1, and, thereafter, this Agreement shall be null and void and neither party shall have any other claim against the other under this Agreement, nor any other legal or equitable cause of action against the other; or

12.2.2. If Buyer does not exercise its right to terminate pursuant to Section 12.2.1, then the parties shall proceed with Closing with no abatement of the Purchase Price, but all condemnation awards paid or payable to Seller shall belong to Buyer and shall be paid over and assigned to Buyer at Closing, and Seller shall further execute all assignments and any other documents or other instruments as Buyer may reasonably request or as may be necessary to transfer all interest in all such proceeds and/or awards to Buyer or to whomever Buyer shall direct.

13. **Defaults**.

13.1. **<u>DEFAULT BY BUYER</u>. IN THE EVENT BUYER IS IN DEFAULT UNDER THIS AGREEMENT AND FAILS TO CURE SUCH DEFAULT WITHIN TWENTY (20) BUSINESS DAYS AFTER WRITTEN NOTICE OF DEFAULT FROM SELLER, AND IF, AS A RESULT OF SUCH UNCURED DEFAULT BY BUYER, CLOSING HEREUNDER SHALL NOT OCCUR, THEN SELLER SHALL, AS ITS SOLE REMEDY FOR DEFAULT HEREUNDER, BE ENTITLED TO PAYMENT OF THE AMOUNTS TO BE DISBURSED TO SELLER OUT OF THE DEPOSIT IN ACCORDANCE WITH THE INSTRUCTIONS SET FORTH HEREIN AS LIQUIDATED DAMAGES (AND NOT AS A PENALTY) AND**

AS SELLER'S SOLE REMEDY, IN LIEU OF, AND AS FULL COMPENSATION FOR, ALL OTHER RIGHTS OR CLAIMS OF SELLER AGAINST BUYER BY REASON OF SUCH DEFAULT; AND WHEN BUYER AUTHORIZES THE TITLE INSURER TO TENDER PAYMENT TO SELLER OF THE AMOUNTS TO BE DISBURSED TO SELLER OUT OF THE DEPOSIT IN ACCORDANCE WITH THE INSTRUCTIONS SET FORTH HEREIN, EXCEPT FOR THE OBLIGATIONS WHICH EXPRESSLY SURVIVE THE TERMINATION HEREOF, THIS AGREEMENT SHALL TERMINATE AUTOMATICALLY WITHOUT THE NEED OF ANY FURTHER WRITTEN CONFIRMATION, AND THE PARTIES SHALL BE RELIEVED OF ALL FURTHER OBLIGATION AND LIABILITY HEREUNDER.

13.2. Default by Seller. In the event Seller is in default under this Agreement and fails to cure such default within fifteen (15) business days after written notice of default from Buyer, or if such default cannot reasonably be cured within such fifteen (15) business day period, the Seller fails either (i) to commence to cure such default within such fifteen (15) day period and to diligently continue to pursue such effort to cure to completion, or (ii) to cure such default within a reasonable time after the expiration of the first fifteen (15) day period, in no event to exceed forty-five (45) days after the written notice of default, then Buyer shall be entitled as its sole remedy to (a) specifically enforce this Agreement against Seller and recover enforcement costs and fees, or (b) terminate and cancel this Agreement and receive and/or be paid the monies and amounts as described below. In the event Seller is in default under this Agreement and Buyer elects to terminate and cancel this Agreement, Buyer shall give notice to Seller and the Title Insurer of such termination and of the amount of all actual and reasonable third party out of pocket costs incurred by Buyer in connection with the transactions contemplated by this Agreement (including the preparation of construction drawings (collectively, "*Buyer's CDs*"), but only if and to the extent that the costs of such preparation have been irrevocably committed by Buyer at the time of such default by Seller) together with reasonably supporting documentation thereof, in which event the Deposit shall be returned to Buyer as provided in this Agreement and Seller shall reimburse Buyer within ten (10) days after such notice of termination is given for all such out of pocket costs; and upon receipt by Buyer of all such monies and amounts, this Agreement shall terminate and, thereafter, this Agreement shall be null and void and neither party shall have any other claim against the other under this Agreement, nor any other legal or equitable cause of action against the other. In the event of Closing it is agreed by the parties hereto that the foregoing shall not in any way diminish or limit any of Seller's indemnification obligations specifically set forth in this Agreement, or any of Seller's other obligations surviving the Closing as provided hereunder or any of Buyer's remedies in connection therewith, including the right to pursue damages incurred by reason of a material breach or other material violation of the representations and warranties set forth in, and subject to, Section 4. The rights, options, and remedies of Buyer under this Agreement shall be cumulative. The exercise by Buyer of any right, option or remedy shall not prejudice or impair any of Buyer's other rights, options or remedies except as otherwise expressly provided herein. The passage of time after the occurrence of a default by Seller shall not prejudice or limit any of Buyer's rights, options or remedies.

14. Buyer's Additional Rights.

14.1. Buyer's External Approvals. On or before 5:00 p.m., local time in the City, on the External Approvals Deadline (defined in Section 6.2): (i) Buyer shall have received Approvals

Evidence of conditional site plan for the Intended Improvements, and; (ii) Buyer shall be in position to receive, in Buyer's reasonable judgment and with no remaining discretionary approvals required by any Governmental Authority, Approvals Evidence of final, unappealed, and unappealable permits and approvals (including Buyer's building permit) (collectively, the "*Buyer's External Approvals*"), issued by applicable Governmental Authorities, for: (a) Buyer's design, construction, development, ownership, operation, and use on the Property of the Intended Improvements; (b) the Traffic Improvements; including evidence acceptable to Buyer that the Traffic Improvements will be fully completed and operational no more than six (6) months after the Closing Date; (c) the Incentives (except for the final execution of the Grant Agreement, the terms of which have been approved by Seller and the Economic Development Authority of the City of Norfolk, as applicable, but which document will not be executed and delivered until Closing); and (d) the completion of the Pre-Development Activities. Buyer shall be deemed to have achieved Buyer's External Approvals of subsection 14.1(a) above if (i) Buyer has received conditional approval of its site plan from all applicable Governmental Authorities for the Intended Improvements that only remains subject to the completion of limited final conditions that, in Buyer's reasonable judgment, can be satisfied by Buyer without unreasonable cost or delay and without the need for additional discretionary approvals of any Governmental Authority, and (ii) Buyer has received reasonable evidence that a building permit for the construction of the Intended Improvements will be issued without delay upon Buyer satisfying the remaining limited conditions and achieving final unconditional approval of Buyer's site plan.

14.1.1. If Buyer has not received Approvals Evidence of the Buyer's External Approvals by the External Approvals Deadline, then Buyer shall have the right to terminate this Agreement by notice of termination to Seller within five (5) business days after the External Approvals Deadline, given in accordance with Section 16, in which event the Deposit shall be disbursed to Buyer in accordance with Section 3.3.1, Seller shall reimburse Buyer for soft costs related to the Traffic Improvements (traffic studies, turn lane design and analysis) up to $60,000.00, and except for the obligations set forth in this Agreement which expressly survive the termination hereof, the parties shall be relieved of all further obligation and liability hereunder. If Buyer fails to terminate this Agreement for failure of the condition set forth in this Section 14.1 (the "*Buyer's External Approvals Condition*") by written notice to Seller within five (5) business days after the External Approvals Deadline, then Buyer shall be deemed to have waived its right to terminate this Agreement for failure of the Buyer's External Approvals Condition.

14.2. Buyer's Title and Survey Review and Approval.

14.2.1. Title Commitment and Survey. Within five (5) business days after the Effective Date, Buyer shall order a current preliminary report or title commitment from the Title Insurer with respect to the Property (the "*Title Report*") and shall cause a copy of the Title Report to be delivered to Seller. No later than ten (10) business days after the probable boundary of the Property has been determined pursuant to Section 2.1, Buyer shall order an ALTA/ACSM land title survey and topographic survey of the Sale Parcel (collectively, the "*Survey*") and shall cause a copy the Survey to be delivered to Seller within ten (10) business days after Buyer receives a Survey draft that is acceptable to Buyer. Buyer shall pay for the cost of the Survey, subject to reimbursement at Closing pursuant to Section 9.2.16. Buyer shall have the right to terminate this Agreement if Buyer does not approve of the condition of title or Survey in accordance with the provisions of this Section 14.2. Upon Buyer's approval of the Survey, the legal description of the

Sale Parcel set forth on the Survey shall be automatically substituted for the descriptions set forth in this Agreement for all purposes, and, upon Buyer's written request, Seller shall enter into an amendment to this Agreement, confirming the automatic substitution provided for in this sentence.

14.2.2. Buyer's Title Objection. On or before the Due Diligence Period End Date, Buyer may give Seller written notice ("*Buyer's Title Notice*") of Buyer's disapproval of any item or exception disclosed by the Title Report or Survey to which Buyer has an objection (each, a "*Title Objection*"; collectively, the "*Title Objections*"). Subject to the following provisions, all exceptions to title or survey subject to which Buyer agrees to take title to the Property pursuant to the terms of this Section 14.2 are collectively referred to as the "*Permitted Title Exceptions*." Notwithstanding anything to the contrary herein or in any Buyer's Title Notice, the Property shall be conveyed subject to the following matters, which shall be included as Permitted Title Exceptions:

(a) Those matters that either are not objected to in writing within the time periods provided herein, or if objected to in writing by Buyer, are those which (i) Seller has elected not to remove or cure, or has been unable to remove or cure, and (ii) pursuant to the provisions below, Buyer has elected or is deemed to have elected to accept as Permitted Title Exceptions;

(b) The lien of all ad valorem real estate taxes and payments in lieu of taxes and assessments not yet due and payable as of the Closing Date, subject to adjustment as herein provided; and

(c) Items shown on the Survey and not objected to by Buyer or waived or deemed waived by Buyer in accordance with the terms of this Section 14.2.2; however, in an effort to not clutter the record title, these matters shall not be listed as exceptions on the Deed unless raised by the Title Insurer.

14.2.3. Seller's Title Response. Within ten (10) business days after its receipt of Buyer's Title Notice, Seller shall notify Buyer in writing ("*Seller's Title Response*") whether Seller elects to cause the Title Objections noted in Buyer's Title Notice to be removed or, with the prior written consent of Buyer, which consent may be withheld in Buyer's sole and absolute discretion, to be affirmatively insured over at Seller's sole cost and expense in such manner as Buyer approves (subject, however, to the obligations of Seller stated in Section 14.2.4). The failure of Seller to deliver Seller's Title Response to Buyer within the specified time period shall be deemed Seller's refusal to eliminate any of the Title Objections set forth in Buyer's Title Notice (provided, however, that Seller may not refuse to discharge the obligations of Seller stated in Section 14.2.4). If Seller elects to cure any such Title Objections, then Seller shall on or prior to the Closing Date cure such Title Objections. If Seller elects not to cure any or all of the Title Objections noted in Buyer's Title Notice (provided, however, that Seller may not refuse to discharge the obligations of Seller stated in Section 14.2.4), or fails timely to cure any such Title Objections that Seller has elected to cure in Seller's Title Response (collectively, "*Uncured Title Objections*"), then Buyer may elect either (a) to close the acquisition of the Property subject to the Uncured Title Objections (which, in the event of Buyer's election to close, shall thereafter be deemed Permitted Title Exceptions hereunder,

but the Uncured Title Objections shall in no event include New Encumbrances or Monetary Liens) and the other Permitted Title Exceptions, except to the extent of Monetary Liens described below which shall be paid from the Purchase Price at the Closing; or (b) to terminate this Agreement by written notice thereof to Seller on or before the later of (i) the Due Diligence Period End Date, or (ii) the date that is thirty (30) days after Buyer's receipt of such Seller's written notice that Seller is unable or unwilling to cure any Title Objection. In the event Buyer terminates pursuant to the foregoing, then the Deposit shall be disbursed to Buyer in accordance with Section 3.3.1, and except for the obligations set forth in this Agreement which expressly survive the termination hereof, the parties shall be relieved of all further obligation and liability hereunder.

14.2.4. Seller Encumbrances. Notwithstanding anything to the contrary set forth herein, between the Effective Date of this Agreement and the Closing Date:

(a) Seller shall not create, incur, or suffer any easement, liens, encumbrances, exceptions to title, survey exceptions, or obligations pertaining to all or any portion of the Property ("*New Encumbrances*") to be placed against or otherwise affect all or any portion of the Property unless such New Encumbrances have been previously approved by Buyer in writing (such approval not to be unreasonably withheld, so long as the same meet the requirements of this Section 14.2.4(a) and are actually removed by Seller) and will be, and are capable of being, removed by Seller at or prior to Closing at No Out-Of-Pocket Expense to Buyer; and

(b) Seller shall eliminate from title any of the following arising by, through, or under Seller, any liens for unpaid taxes or payments in lieu of taxes; assessments and other charges which are due and payable; any contractors', mechanics', and materialman's or similar liens; any judgment liens; and any mortgages, deeds of trust, and security interests encumbering the Property (collectively, "*Monetary Liens*"). In no event shall any Monetary Liens be considered Permitted Title Exceptions.

14.2.5. Gap Title and Survey Defects. Subject to Seller's obligations in this Section 14, Buyer may, at or prior to Closing, notify Seller in writing from time to time (each, a "*Buyer's Subsequent Title Notice*") of any newly identified exceptions to title or survey or encumbrance on the Property not reflected on either the Title Report or the Survey at the time the Buyer's Title Notice is given but raised or reflected in any update or "bringdown" of the Title Report, Survey, or legal description thereafter received by Buyer (each, a "*Title Update*") or otherwise discovered by Buyer (each, a "*Gap Title Objection*"; collectively, the "*Gap Title Objections*"). In any event, Buyer shall notify Seller of such Gap Title Objection within ten (10) business days of being made aware of the existence of such exception; failure by Buyer to notify Seller of such Gap Title Objection within such prescribed time shall cause any such Gap Title Objection to thereafter be deemed to be a Permitted Title Exception hereunder. If, within such time period, Buyer delivers a Buyer's Subsequent Title Notice to Seller, Buyer and Seller shall have the same rights and obligations with respect to such notice as apply to Buyer's Title Notice under

Sections 14.2.2 and 14.2.3 hereof, with the Buyer's Subsequent Title Notice being treated as a Buyer's Title Notice.

15. **Undertakings by Seller and Buyer**. Buyer acknowledges and agrees that wherever in this Agreement Seller has agreed to cooperate with, or otherwise assist, Buyer in obtaining any license, permit, authorization, consent, approval, incentive or other concession or agreement including, without limitation, any Buyer's External Approvals, (i) it shall mean that the Department of Development and its staff, only, will undertake such activities (and not any other departments of the Seller); (ii) Seller's obligation shall be to act in good faith but not required to achieve any particular outcome or result; and (iii) such agreement shall not eliminate, or be deemed to modify, the requirements or process for obtaining such license, permit, authorization, consent, approval, incentive or other concession or agreement which would normally be required of Buyer in the absence of such Seller cooperation. In addition to the obligations required to be performed hereunder by Seller and Buyer at Closing, each of Seller and Buyer agree to perform such other acts, and to execute, acknowledge, and deliver, prior to, at, or subsequent to Closing, such other instruments, documents, and other materials as shall be necessary in order to effect the consummation of the transactions contemplated hereby and to vest title to the Property in Buyer or Buyer's nominee. Notwithstanding the foregoing, Buyer's and Seller's respective obligations under this Section 15 shall be at No Out-Of-Pocket Expense to such party.

16. **Notices**. All notices and other communications hereunder shall be in writing (whether or not a writing is expressly required hereby), and shall be deemed to have been given and become effective if sent by either party or its counsel via an express mail service or via courier or via email (in the case of email, only if duplicate notice is also given via express mail service or via courier, in which event the notice shall be deemed effective on receipt of the email), then if and when delivered to and received (or refused) by the respective parties at the below addresses (or at such other address as a party may hereafter designate for itself by notice to the other party as required hereby), and addressed to the respective parties at the below addresses (or at such other address as a party may hereafter designate for itself by notice to the other party as required hereby):

If to Seller:

Director of Economic Development
500 East Main Street, Suite 1500
Norfolk, VA 23510
Tel: (757) 664-4763
Attn: Chuck Rigney
Email: Chuck.Rigney@norfolk.gov

City Manager
1101 City Hall Building, 810 Union Street
Norfolk, Virginia 23510
Tel: (757) 664-4242
Attn: Marcus D. Jones
Email: city.manager@norfolk.gov

Deputy City Manager & Executive Director of Economic Development Authority

500 East Main Street, Suite 1500
Norfolk, VA 23510
Tel: (757) 664 - 4338
Attn: Peter Chapman
Email: Peter.chapman@norfolk.gov

With an additional required copy to Seller's legal counsel:

City Attorney
900 City Hall
810 Union Street
Norfolk, VA 23510
Tel: (757) 664-4529
Attn: Bernard A. Pishko
Email: Bernard.Pishko@norfolk.gov

If to Buyer:

IKEA Property, Inc.
420 Alan Wood Road
Conshohocken, PA 19428
Attention: President
Phone: 610-834-0180
Email address: douglas.greenholz2@ikea.com

With a required copy to:

IKEA Property, Inc.
420 Alan Wood Road
Conshohocken, PA 19428
Attention: Annette Banks
Phone: 610-834-0180
Email address: annette.banks@ikea.com

With an additional required copy to Buyer's counsel:

Larsson & Scheuritzel P.C.
Centre Square West
1500 Market Street, Suite 3510
Philadelphia, PA 19102
Attention: David J. Larsson, Esq.
Phone: 215-656-4221
Email address: dlarsson@larssonlaw.com

17. **Brokers**. Seller and Buyer each acknowledge and represent to the other that no brokers are involved in this transaction except that Buyer has dealt with Sezin B. Cortinas of Divaris Real Estate, Inc., One Columbus Center, Suite 700, Virginia Beach, VA 23462 ("*Buyer's Broker*").

When and if a Closing hereunder shall occur, but not otherwise, Buyer will pay any commission due and payable to Buyer's Broker pursuant to the terms of a separate agreement. Buyer shall indemnify Seller against any claims for commissions by Buyer's Broker. Each party represents to the other that neither has made any agreement or taken any action that may cause any broker, agent, or person other than Buyer's Broker to become entitled to a consulting, brokerage, or other fee or commission as a result of the transactions contemplated by this Agreement; and Seller (subject to applicable Laws) and Buyer each hereby indemnifies and shall defend the other from any and all claims, actual or threatened, for compensation by any third person (other than Buyer's Broker listed above) by reason of such party's breach of its representation or warranty contained in this Section 17.

18. **Miscellaneous**.

18.1. Assignability. Buyer may freely assign or transfer any portion or all of its rights or obligations under this Agreement to any entity controlled by or under common control with Buyer, or through a nominee, to which Buyer may assign its rights hereunder, pursuant to an acquisition for the benefit of Buyer through a sale/leaseback arrangement; and upon any such assignment such assignee shall be deemed to be Buyer hereunder for all purposes hereof and have all the rights of Buyer hereunder (including the right of further assignment), and Buyer shall be further entitled to assign any portion or all of its rights under this Agreement, without the consent of Seller, to a Qualified Intermediary for purposes of a deferred like/kind exchange pursuant to Section 1031 of the United States Internal Revenue Code ("*Exchange Transaction*"), as more particularly set forth in Section 20 below, herein title would be taken in the name of Buyer or any such entity controlled by or under common control with Buyer, or nominee of Buyer; *provided* that neither Buyer nor any subsequent assignor shall be relieved from any liability or obligation hereunder. Seller may not assign or transfer all or any portion or all of its rights or obligations under this Agreement without the prior written consent of Buyer, which consent may be withheld in Buyer's sole and absolute discretion.

18.2. Attorneys' Fees. In any dispute or action between the parties arising out of this Agreement, or in connection with the Property, the Prevailing Party shall be entitled to have and recover from the other party all losses, damages, costs, and expenses (including court costs and reasonable attorneys' fees) related thereto, whether by final judgment or by out of court settlement. As used herein, the "*Prevailing Party*" shall be the party entitled to an adjudication of the dispute in its favor, irrespective as to whether there is a monetary or equitable award.

18.3. Governing Law; Venue. This Agreement shall be governed by the law of the Commonwealth of Virginia, and shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. The sole venue for all actions arising under this Agreement shall be in the Circuit Court of the City of Norfolk, Virginia.

18.4. "Day"; "Business Day"; Computation of Time. All references to "*days*" in this Agreement shall be construed to mean calendar days unless otherwise expressly provided and all references to "*business days*" shall be construed to mean days other than a Saturday, Sunday or legal holiday in Norfolk, Virginia. In computing any period of time pursuant to this Agreement, the day of the act or event from which the designated period of time begins to run will not be

included. The last day of the period so computed will be included, unless it is not a business day, in which event the period runs until the end of the next business day.

18.5. TIME OF THE ESSENCE. ALL TIMES, WHEREVER SPECIFIED HEREIN FOR THE PERFORMANCE BY SELLER OR BUYER OF THEIR RESPECTIVE OBLIGATIONS HEREUNDER, ARE OF THE ESSENCE OF THIS AGREEMENT.

18.6. Construction. Whenever in this Agreement: (i) the words "*herein*," "*hereunder*," "*hereinabove*," "*hereinafter*," or similar words are used, the same shall be deemed to refer to this entire Agreement (including all Exhibits attached hereto, which are hereby incorporated by reference herein), unless expressly stated to the contrary, and (ii) the terms "*include*," "*including*" and words of similar import shall be construed as if followed by the phrase "without limitation." This Agreement shall not be interpreted or construed more strictly against one party or the other merely by virtue of the fact that it was drafted by counsel to Seller or Buyer; it being hereby acknowledged and agreed that Seller and Buyer have both contributed materially and substantially to the negotiation and drafting of this Agreement.

18.7. Headings. The headings preceding the text of the Sections, paragraphs and subparagraphs hereof are inserted solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect.

18.8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which counterparts shall constitute one Agreement. Execution copies of this Agreement may be delivered by email, and the parties hereto agree to accept and be bound by scanned signatures transmitted via email hereto, which signatures shall be considered as original signatures with the transmitted Agreement having the same binding effect as an original signature on an original Agreement. At the request of either party, any scanned document transmitted via email is to be re-executed in original form by the party who executed the original scanned document. Neither party may raise the use of a scanned document or the fact that any signature was transmitted through the use of email as a defense to the enforcement of this Agreement.

18.9. Background and Exhibits. The "Background" set forth at the outset of this Agreement, together with all Exhibits that are referred to herein and that are attached hereto or bound separately and initialed by the parties, are expressly made and constitute a part of this Agreement.

18.10. Entire Agreement; Amendments. This Agreement and the Exhibits hereto set forth all of the promises, covenants, agreements, conditions, and undertaking between the parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as contained herein. This Agreement may not be changed orally but only by an agreement in writing, duly executed by or on behalf of the party or parties against whom enforcement of any waiver, change, modification, consent, or discharge is sought.

19. **Confidentiality**. NEITHER SELLER NOR BUYER SHALL DISCLOSE EITHER THE EXISTENCE OF, OR ANY OF THE SPECIFIC TERMS OR PROVISIONS OF, THIS

AGREEMENT TO ANY PERSON OR ENTITY NOT A PARTY TO THIS AGREEMENT (OTHER THAN TO BUYER'S BROKER, AND BUYER'S AND SELLER'S RESPECTIVE COUNSEL AND PROFESSIONALS), NOR SHALL EITHER SELLER OR BUYER ISSUE ANY PRESS RELEASES OR MAKE ANY PUBLIC STATEMENTS RELATING TO THIS AGREEMENT OR BUYER'S INTENDED USE OF THE PROPERTY, WHETHER OBTAINED THROUGH DOCUMENTS, ORAL OR WRITTEN COMMUNICATIONS, OR OTHERWISE (COLLECTIVELY THE "*INFORMATION*"); PROVIDED, HOWEVER, THAT (A) FOLLOWING ADVANCE WRITTEN NOTICE TO SELLER, BUYER MAY MAKE A PUBLIC ANNOUNCEMENT, AT BUYER'S DISCRETION, OF BUYER'S INTENT TO PURCHASE THE PROPERTY, SO LONG AS SUCH ANNOUNCEMENT DISCLOSES ONLY THE EXISTENCE OF THIS AGREEMENT AND DOES NOT DISCLOSE ANY OF THE TERMS OF THIS AGREEMENT, AND (B) EACH OF SELLER AND BUYER (i) MAY MAKE NECESSARY DISCLOSURES TO ITS EMPLOYEES, AND PROFESSIONAL AND BUSINESS ADVISORS SO LONG AS SUCH PARTY INFORMS EACH RECIPIENT OF THE REQUIREMENT TO KEEP THE INFORMATION CONFIDENTIAL, (ii) MAY MAKE NECESSARY DISCLOSURES TO GOVERNMENTAL AUTHORITIES AS REQUIRED BY LAW (INCLUDING SEC REGULATIONS), OR (iii) MAY MAKE NECESSARY DISCLOSURES TO COMPLY WITH ANY COURT ORDER OR ADMINISTRATIVE AGENCY DEMAND AFTER GIVING THE OTHER PARTY REASONABLE ADVANCE NOTICE OF SUCH DEMAND TO THE EXTENT ALLOWABLE PRIOR TO DISCLOSURE, (iv) MAY MAKE NECESSARY DISCLOSURES TO ENFORCE THIS AGREEMENT, AS AND TO THE EXTENT APPLICABLE, AND (v) MAY DISCLOSE THE EXISTENCE OF (BUT NOT ANY OF THE SPECIFIC TERMS OR PROVISIONS OF) THIS AGREEMENT LETTER TO GOVERNMENTAL AUTHORITIES AS DEEMED ADVANTAGEOUS IN ORDER TO ADVANCE THE PURPOSE OF OBTAINING THE EXTERNAL APPROVALS, AND (B) NOTWITHSTANDING THE FOREGOING, BUYER MAY DISCLOSE THE EXISTENCE AND SPECIFIC TERMS OF THIS AGREEMENT TO GOVERNMENTAL AUTHORITIES AS DEEMED ADVANTAGEOUS IN ORDER TO ADVANCE THE PURPOSE OF OBTAINING THE EXTERNAL APPROVALS.

20. **Buyer's Exchange Transaction**. Buyer may designate the Property as "exchange property" or otherwise identify the Property as property that is part of an Exchange Transaction, but Seller makes no warranty or representation that the transaction contemplated by Buyer as an Exchange Transaction will qualify under Section 1031. In connection therewith, Seller hereby agrees, at No Out-Of-Pocket Expense to Seller, to execute and comply with such documents as requested by Buyer, including an amendment to, or assignment of, this Agreement pertaining to the Exchange Transaction and provide written acknowledgement of receipt of such written notices as Buyer furnishes to Seller concerning the Exchange Transaction and shall otherwise cooperate with Buyer in connection with the Property being part of an Exchange Transaction provided that Seller's obligations hereunder shall not be increased nor its rights adversely affected thereby in any such instance. The provisions of this Section 20 shall survive the Closing and the delivery of the Deed.

21. **The IKEA Group Anti-Corruption Policy**. Seller acknowledges that it has been informed that the IKEA Group Anti-Corruption Policy attached hereto as **Exhibit F** and hereby made a part hereof as if full set forth herein (as amended, modified, or supplemented by the Buyer from time to time, "*IKEA Group Anti-Corruption Policy*") applies to all agreements entered into

by Buyer. Accordingly, Seller shall, and Seller shall cause all of its employees, agents, consultants, professionals, and engineers to, fully comply with the conditions and requirements of the IKEA Group Anti-Corruption Policy. Seller shall give Buyer notice, in writing, of any attempt or request from any employee or co-worker of Buyer or any person or entity owning, owned by, or under common control with, Buyer to obtain advantages that contravene the IKEA Group Anti-Corruption Policy. Furthermore, in the event Buyer amends, modifies, or supplements the IKEA Group Anti-Corruption Policy as set forth in **Exhibit F**, Seller agrees that it shall (and shall cause all of its employees, agents, consultants, professionals, and engineers to) fully comply with the conditions and requirements of such amendment, modification, and supplement as and to the extent a copy thereof is furnished to Seller.

22. **Waiver of Jury Trial**. Seller and Buyer hereby waive trial by jury in any action, proceeding or counterclaim (whether arising in tort or contract) brought by either against the other on any matter arising out of or in any way connected with this Agreement. The provisions of this Section shall survive the Closing.

[The remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement of Sale between the City of Norfolk, as Seller, and IKEA Property, Inc., as Buyer, as of the date first above written.

SELLER:

CITY OF NORFOLK

By: _____

Name: Marcus D. Jones

Its: City Manager

ATTEST:

_____

City Clerk

APPROVED AS TO CONTENTS:

_____

Director, Department of Development
City of Norfolk

APPROVED AS TO FORM AND CORRECTNESS:

_____

Assistant City Attorney, City of Norfolk

[Buyer's signature appears on next page]

BUYER:

IKEA Property, Inc.,
a Delaware corporation, by its authorized signatories

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

Joinder by Title Insurer

_____, the "Title Insurer" named and identified as such in the foregoing Agreement, intending to be legally bound hereby, has joined in the execution thereof solely for the purposes of (a) acknowledging receipt of the _____ Deposit referred to therein; and (b) agreeing to perform its obligations as escrow agent as provided for herein.

Title Insurer

Title Company Name

By:_____
Name:_____
Title:_____
Dated: _____, 2016

Exhibit A
Parcel Plan and Legend Description Of Sale Parcel

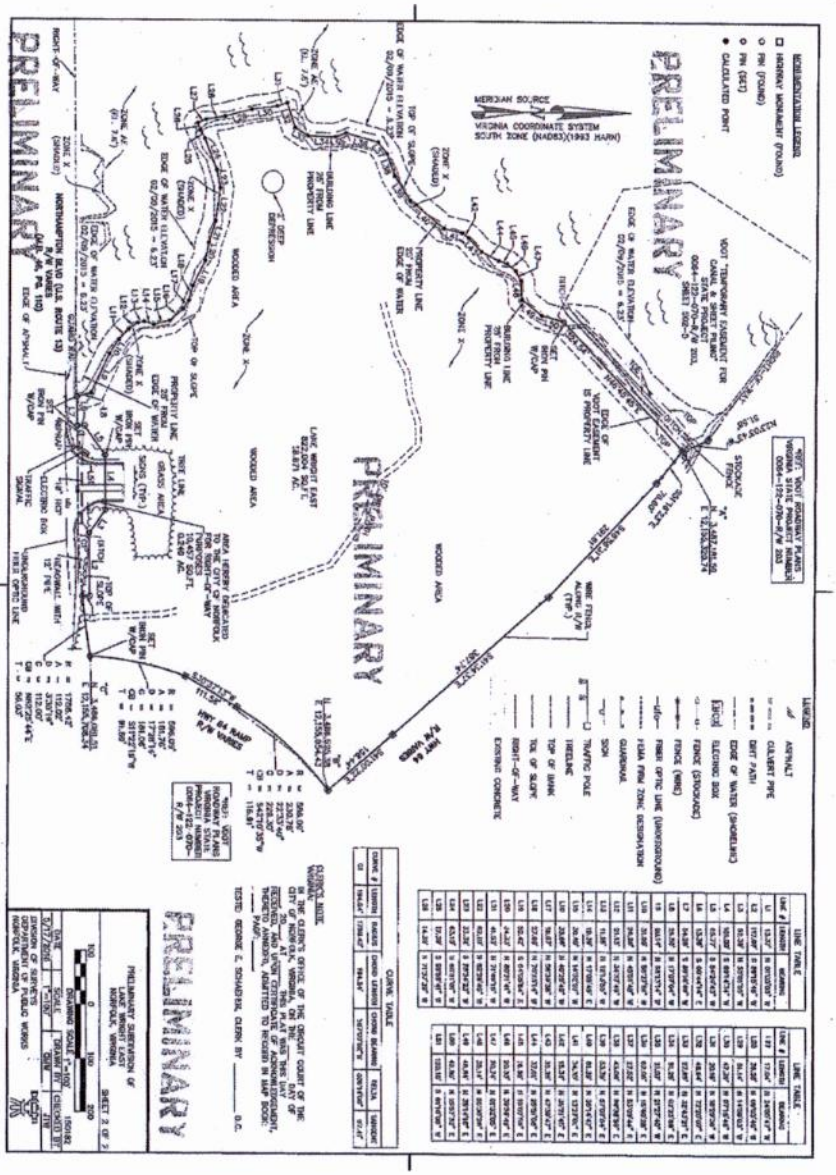

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Exhibit B
Disclosed Information

5. Preliminary Jurisdictional Determination Letter Dated 8/4/2015

6. NEDA Lake Wright East, Norfolk Wetlands Delineation Letter Dated 2/5/2007

7. Lake Wright East Traffic Impact Analysis Dated 1/11/2007

8. Report of Preliminary Subsurface Exploration and Geotechnical Engineering Evaluation Dated 10/24/2006

Exhibit C
Traffic Development Plan

Exhibit D

Exhibit A
Parcel Plan And Legal Description Of Sale Parcel

Grant Agreement

Exhibit A
Parcel Plan And Legal Description Of Sale Parcel

GRANT AGREEMENT

THIS GRANT AGREEMENT is made as of the ___ day of _____, 20__, between the ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NORFOLK a duly organized and existing political subdivision of the Commonwealth of Virginia (the "Authority"), and IKEA PROPERTY, INC., a Delaware corporation ("Grantee").

WITNESSETH:

WHEREAS, the City of Norfolk, Virginia (the "City") and Grantee have entered that certain Agreement of Sale dated _____ __, 2016, for certain real property known as "Lake Wright East" containing 18.78 acres, more or less, and located at 6000 Northampton Boulevard in the City (the "Property"),

WHEREAS, in the Agreement of Sale the City agreed to provide incentives to the Grantee, through the Authority, upon the term and conditions set forth herein;

WHEREAS, the Agreement of Sale provides for the purchase and development by Grantee for the "Intended Improvements," as defined below; and

WHEREAS, development of the Property for Grantee's Intended Improvements and the ongoing use of the Property by Grantee for the Intended Improvements has been found by both the Directors of the Authority and the City Council of the City (the "City Council") to constitute a significant economic development opportunity for the City, a positive factor in achieving the economic development objectives of the City, and worthy of inducement, as set forth in the resolutions adopted by the Authority and actions taken by the City Council approving the terms herein.

NOW, THEREFORE, WITNESSETH:

1. Definitions.

The following terms shall have the meanings set forth unless the context clearly requires otherwise:

1.1. "Intended Improvements" means and includes an approximately 350,000 square foot blue and yellow IKEA retail furniture and furnishings store (including any other uses found from time to time in any other IKEA retail store), with an exclusive parking field of at least 1,200 spaces, together with all of Buyer's required colors and trade dress and building and site signage and flags, including a navigational sign tower at least 120 feet in height, all related on-site and off-site improvements, and any and all development and contract rights and all other appurtenances thereto necessary to develop the store and other improvements contemplated, to be constructed, equipped, occupied and operated by Grantee on the Property on a continuous basis.

1.2. "Calendar Year" means the calendar year beginning January 1 and ending December 31.

Exhibit A
Parcel Plan And Legal Description Of Sale Parcel

1.3. "Maximum Grant Amount" means the maximum cumulative amount to be paid to Grantee over the term of the grant which shall be Five Million Dollars ($5,000,000.00).

1.4. "Grant" means the annual sums to be transferred to the Grantee pursuant to the terms of this Agreement as an inducement for the Grantee to purchase the Property and to construct, equip, occupy and operate its business operations for the Intended Improvements at the Property, subject to the Maximum Grant Amount.

2. The Grant.

2.1. *Amount of the Grant.* Subject to the conditions and limits set forth in Sections 3.1 and 3.2 below, subject to the Maximum Grant Amount, and subject to annual appropriation and transfer of funds to the Authority by the City, the Authority will pay to Grantee a sum of money each year during the Grant Term (hereinafter defined), which annual grant payments shall be calculated using the following performance-based formula:

One-half percent (0.5%) of all gross receipts from the Grantee's business operations for the Intended Improvements at the Property during the applicable Calendar Year.

2.2. *Term of the Grant.* The term of the Grant (the "Grant Term") shall commence upon completion of construction of the Improvements (the "Commencement Date"), as evidenced by the issuance of a Certificate of Occupancy, and the opening of the Grantee's business operations at the Property for the Intended Improvements. The Grant Term shall expire upon the first to occur of (A) when the Maximum Grant Amount has been paid to Grantee or (B) upon payment by the Authority of the fifteenth (15th) annual Grant payment to the Grantee. The Grant payments shall commence on the first August 1 following the end of the first full Calendar Year after the Commencement Date and, subject to the terms and conditions set forth herein, shall be paid on each August 1 thereafter during the Grant Term. In the event of an abandonment of Grantee's business operations at the Property for the Intended Improvements for a period of more than six (6) continuous months for reasons other than a casualty or other material damage, Act of God, or other force majeure event outside of the reasonable control of Grantee (in any such case, a "Force Majeure Event"), the Grant Term shall terminate immediately and no further Grant payments shall be made by the Authority.

3. Conditions of the Grant.

The obligation of the Authority to disburse the Grant is subject to the satisfaction of the conditions set forth below.

3.1. *Conditions to Initial Disbursement.* The initial disbursement of the Grant by the Authority shall occur by no later than the first August 1 following the end of the first full Calendar Year after the Commencement Date provided that the following conditions have been satisfied:

A. The Commencement Date shall have occurred.

B. The representations and warranties set forth below shall be true and correct in all material respects as of the date of this Agreement and shall continue to be true and

Exhibit A
Parcel Plan And Legal Description Of Sale Parcel

correct in all material respects at the time of the proposed disbursement of the initial Grant payment.

C. The City shall have calculated and advised the Authority in writing of the amount of the initial disbursement, the City Council of the City shall have appropriated funds for the then current Grant payment and shall have transferred such funds to the Authority. The City's calculation of the amount of the initial Grant payment shall be deemed accurate and correct absent manifest error.

3.2. *Conditions to Each Annual Grant Payment.* Each subsequent disbursement of the Grant shall be subject to the satisfaction of the following conditions:

A. The conditions to the initial annual Grant payment shall have been satisfied.

B. Subject to the occurrence of a Force Majeure Event, Grantee shall have continuously operated its business for the Intended Improvements at the Property. For purposes of this Agreement, "continuous business operations" and to "continuously operate" shall mean to continue to operate Grantee's business for the Intended Improvements every weekday during normal business hours, excluding holidays.

C. The representations and warranties set forth below shall be true and correct in all material respects as of the date of this Agreement, and shall continue to be true and correct in all material respects at the time of the proposed disbursement of each year's Grant payment.

D. Based upon such documentation as the City deems appropriate, the City shall have calculated and advised the Authority in writing of the amount of the current Grant payment, the City Council of the City shall have appropriated funds for the Grant, and the City shall have transferred such funds to the Authority. The City's calculation of the amount of each annual Grant payment shall be deemed accurate and correct absent manifest error.

4. Representations and Warranties.

Grantee represents and warrants to the Authority that:

4.1. *Due Organization, Authority and Qualification.* Grantee is a duly organized and validly existing limited liability company under the laws of the State of North Carolina, is registered to do business in Virginia, is in good standing in the state of its organization, and has the full power and authority to own its properties and other assets and to transact the Intended Improvements at the Property.

4.2. *Taxes.* Grantee has filed and shall file all tax returns which are required to be filed in the Commonwealth of Virginia and elsewhere and has paid all taxes (including interest and penalties) which have become due pursuant to such returns or pursuant to any assessment or notice of tax claim or deficiency received by it. All tax liabilities within the Commonwealth of Virginia and elsewhere were adequately provided for when due and are now shown current on the books of Grantee. No material tax liability has been asserted by the Internal Revenue Service, the

Exhibit A
Parcel Plan And Legal Description Of Sale Parcel

Commonwealth of Virginia, the City, or any other jurisdiction for taxes (or interest or penalties thereon) in excess of those already paid.

4.3. *Compliance with Laws*. To Grantee's best knowledge, Grantee and all of its assets and properties located in the Commonwealth of Virginia, including without limitation the Property, are and shall be in compliance in all material respects with all applicable laws, rules and regulations of each Federal, state, municipal or other governmental department, agency or authority, including without limitation the Americans with Disabilities Act of 1990, the regulations promulgated thereunder, and all applicable environmental, land use and zoning laws and regulations, to the extent applicable.

4.4. *Information Necessary to Calculate Grant Payments*. Reports of gross receipts and other relevant documents required by law to be filed with the Tax Commissioner of the Commonwealth of Virginia or the Commissioner of Revenue of the City for the applicable tax year must be timely filed and copies delivered to the Authority (collectively, the "Required Information"), which shall then provide copies of such Required Information to the City. Grantee's failure to timely file Required Information with the Authority shall not jeopardize the payment of any Grant payment unless and until the Authority notifies Grantee of Grantee's failure to provide Required Information and Grantee does not cure such failure within thirty (30) days of Grantee's receipt of such notice.

5. General Matters.

5.1. *Authority Obligations Subject to Appropriation; Exculpation.*

A. All obligations of the Authority hereunder for the disbursement of the Grant and any other payment of money are subject to and expressly conditioned upon funds being appropriated, calculated and approved for such purpose by the City Council, the amount of Grantee's grant payment being calculated and approved by the City, and the funds being delivered to the Authority, and shall not at any time constitute a legal obligation of the Authority for the disbursement of the Grant or the payment of money except to the extent so appropriated and delivered.

B. Neither the directors of the Authority nor any person executing this Agreement on behalf of either party shall be liable personally thereon by reason of the execution and delivery hereof. This Agreement is not, and shall not be deemed to constitute, a general obligation of the Commonwealth of Virginia or any political subdivision thereof, including the Authority and the City, and neither the Commonwealth of Virginia nor any such political subdivision thereof shall be liable thereon, nor in any event shall this Agreement be payable out of funds or properties other than as set forth herein. This Agreement shall not constitute an indebtedness within the meaning of any Commonwealth of Virginia municipal debt limitation or restriction.

C. No covenant, agreement or obligation contained in this Agreement shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of the Authority or Grantee in his or her individual capacity, and no such director, officer, employee or agent shall be subject to any liability under this Agreement or with respect to any other action taken by him or her.

Exhibit A
Parcel Plan And Legal Description Of Sale Parcel

5.2. *Assignment*. Grantee may not assign its rights under this Agreement without the prior written consent of the Authority and the City.

5.3. *Waiver*. The failure of the Authority or Grantee to insist upon strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy. No waiver by the Authority or Grantee of any term or provision of this Agreement shall be deemed to have been made unless expressed in writing and duly signed by the Authority or Grantee, as applicable.

5.4. *Severability*. If any clause or provision of this Agreement is or becomes illegal, invalid or unenforceable because of present of future laws or any rule or regulation of any governmental body or entity, then the remaining parts of this Agreement shall not be affected, and said remaining parts of this Agreement shall be enforceable, to the extent they are consistent with the spirit and intent of this Agreement in its original form.

5.5. *Licensee and Permits*. It shall be the ultimate responsibility of Grantee at its expense to secure all licenses and permits required to be obtained by it with respect to construction, completion, equipping and occupancy of the Improvements.

5.6. *Notices Applicable Law*. This Agreement shall be construed under and shall be governed by the laws of the Commonwealth of Virginia. In the event of a conflict arising under this Agreement, venue shall be in the Circuit Court of the City of Norfolk.

5.7. *Interpretation*. For the purpose of construing this Agreement, unless the context indicates otherwise, words in the singular number shall be deemed to include words in the plural number and vice versa, words in one gender shall be deemed to include words in other genders, and the word "person" shall be deemed to include a corporation, company or partnership. Headings or Articles and Sections are inserted only for convenience and are not, and shall not be deemed a limitation on the scope of the particular Articles or Sections to which they refer.

5.8. *Notices*. All notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be delivered by hand or by courier service (including reputable overnight courier service such as UPS), or sent by registered or certified mail, return receipt requested, bearing adequate postage and properly addressed as provided below. Each notice given by mail, registered or certified, shall be deemed to be given by the sender when mailed; each notice delivered by hand or by courier service shall be deemed to have been given and received when actually received by the party intended to receive such notice or when such party refuses to accept delivery of such notice. Upon a change of address by either party, such party shall give written notice of such change to the other party in accordance with the foregoing. Inability to deliver because of changed address or status of which no notice was given shall be deemed to be receipt of the notice sent, effective as of the third day after such notice is sent.

To the Authority: Economic Development Authority of the City of Norfolk

Exhibit A
Parcel Plan And Legal Description Of Sale Parcel

	500 E. Main Street, Suite 1500 Norfolk, VA 23510
With a copy to:	Kaufman & Canoles, P.C. 150 W. Main Street, Suite 2100 Norfolk, VA 23510 Attn: George L. Consolvo
And with a copy to:	City Attorney City of Norfolk 810 Union Street, Suite 900 Norfolk, VA 23510
To Grantee:	IKEA Property, Inc. 420 Alan Wood Road Conshohocken, PA 19428 Attention: President Phone: 610-834-0180 Email address: douglas.greenholz2@ikea.com
With a copy to:	Larsson & Scheuritzel P.C. Centre Square West 1500 Market Street, Suite 3510 Philadelphia, PA 19102 Attention: David J. Larsson, Esq.

5.9. *Non-Discriminatory Policies.*

A. Grantee will comply with all applicable laws regarding the discrimination of employees or applicants for employment because of the race, religion, color, sex or national origin of the employee or applicant for employment. Grantee agrees to post, to the extent required by any applicable laws, in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. Grantee, in all solicitations or advertisements for employees placed by or on behalf of Grantee, will state, to the extent required by any applicable laws, that Grantee is an equal opportunity employer.

C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

5.10. *Third Party Beneficiaries.* The City shall be a third party beneficiary of this Agreement. Except for the City, this Agreement is intended solely for the benefit of the parties hereto. Except for the City, this Agreement is not intended and shall not be construed to benefit or create any rights for any third party. It is the express intent of the parties hereto that there be no third party beneficiaries hereof, except for the City.

Exhibit A
Parcel Plan And Legal Description Of Sale Parcel

5.11. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties with respect to the Grant, supersedes all prior understandings and writings and may be amended or modified only by a writing signed by the Authority and Grantee.

WITNESS the following signatures, thereunto duly authorized:

ECONOMIC DEVELOPMENT
AUTHORITY OF THE CITY OF NORFOLK

By: _____
Name: _____
Title: _____
Date: _____

IKEA PROPERTY, INC., a Delaware corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM AND CORRECTNESS:

_____
Counsel to the Economic Development Authority of the City of Norfolk

Exhibit A
Parcel Plan And Legal Description Of Sale Parcel

Exhibit A
Parcel Plan And Legal Description Of Sale Parcel

Exhibit E
Owner's Affidavit

Commonwealth
LAND TITLE INSURANCE COMPANY

File No. 16-001200
6100 Northampton Blvd. Norfolk, VA

OWNER'S AFFIDAVIT AND AGREEMENT

State of _____

County of _____

_____ ("Affiant"), being duly sworn according to law, deposes and says as follows:

1. That Affiant is the _____ of _____, a _____ [limited partnership, limited liability company, corporation] ("Company"), and that Affiant has personal knowledge of the facts sworn to in this affidavit and is fully authorized and qualified to make this affidavit.

2. That Company is the owner of the premises described in the attached Exhibit A (the "Property").

3. That there has been no work, services or labor performed or material furnished in connection with repairs or improvements on the property within one hundred twenty-three (123) days prior to the date of this Affidavit; or, that in the event work has been performed, services rendered, or materials furnished in connection with construction, repair, or improvement on the property during such 123-day period, that all such work performed, services rendered, or materials furnished have been completed and are acceptable to Company, and Company has paid in full all contractors, laborers, and materialmen for such work performed, services rendered, or material furnished in connection with construction, repairs, or improvements on the property during such 180-day period, except as shown on exhibit attached hereto.
   NO EXHIBIT ___ SEE EXHIBIT ATTACHED ___

4. That there are no unrecorded tenancies, leases or other occupancies on the Property except as listed below, and that if any such unrecorded leases, tenancies or other occupancies are listed below, they contain no options to purchase, rights of first refusal or other similar rights relating to the purchase of the Property.
   NO EXHIBIT ____ SEE EXHIBIT ATTACHED ___

5. That no other person has possession or any right to possession of the Property or any interest therein, including oil, gas or other minerals.

6. That there are no financing statements, chattel mortgages, conditional bills of sale or retention of title agreements affecting any fixtures located on the Property.

7. That there are no unrecorded easements or claims of easement; no disputes, discrepancies or encroachments affecting a setback or boundary line; and no contracts, options or rights to purchase other than in the transaction for which this affidavit is given.

8. That there are no unrecorded judgments, liens, mortgages or other claims against the Property.

9. That no proceeding in bankruptcy has ever been instituted by or against Company (and if a partnership, against the general partner(s) thereof), nor has Company ever made an assignment for the benefit of creditors.

10. That there is no action or proceeding relating to the Property in any state or federal court in the United States nor any state or federal judgment or any federal lien of any kind or nature whatever which now constitutes a lien or charge upon the Property.

11. That there are no delinquent state, county, city, school district, water district, or other governmental agency taxes.
    a. due or owing against the Property; and that
    b. no tax suit has been filed by any state, county, city, school district, water district, or other governmental agency for taxes levied against the Property.

Commonwealth
LAND TITLE INSURANCE COMPANY

12. That there has been no notice nor does Affiant have any knowledge of any
    a. recent or future planned improvements (such as street paving, sidewalks;
    b. street lights, etc.) that would result in a special assessment against the property; or
    c. any proceeding which could result in an increase tax or assessment liability against the Property.

13. That all management fees, if any, are fully paid, except as shown on exhibit attached hereto.
    NO EXHIBIT ____ SEE EXHIBIT ATTACHED ____

14. That Company has not purchased any items which have not been paid for in full and for which the provider of such items would have any right, interest or claim that may exist, arise or be asserted against the Title under or pursuant to the Perishable Agricultural Commodities Act of 1930, as amended, 7 USC 499a et seq., the Packers and Stockyard Act of 1921, as amended, 7 USC 181 et seq., or any similar state laws.

15. That no real estate broker has been hired by Company in connection with the sale transaction, or if any real estate broker has been hired, any and all fees and commissions due to the real estate broker(s) will be paid in full through the closing.

Company, recognizing that funding may occur prior to the Deed or Deed of Trust being officially filed for record in the appropriate Clerk's Office, agrees that in consideration of Commonwealth Land Title Insurance Company (hereinafter "Commonwealth") issuing a policy without exception to any matters which may arise between the effective date of the commitment for title insurance and the date the documents creating the interest being insured are filed for record, which matters may constitute an encumbrance on or affect the title (the "GAP"), to promptly defend, remove, bond or otherwise dispose of any encumbrance, lien or objectionable matter to title which may arise or be filed, as the case may be, against said property during the GAP. The Company further agrees to hold harmless and indemnify Commonwealth against all losses, expenses, costs and fees, including, but not limited to, attorney fees, which may arise out of Company's failure to so remove, bond or otherwise dispose of any said liens, encumbrances or objectionable matters.

This Affidavit is given to induce Commonwealth to issue its policy or policies of title insurance with full knowledge that the Company will rely upon the accuracy of same. The Company does hereby indemnify and hold Commonwealth harmless of and from any and all loss, cost, damage, and expense of every kind, including attorneys' fees, which Commonwealth shall suffer or incur or become liable for under its said policy or policies directly or indirectly, due to its reliance on the accuracy of the foregoing statements or in connection with its enforcement of its rights under this Agreement.

EXECUTED AS OF THIS _____ DAY OF _____, 20_____.

AFFIANT:

_____
Name:
Title:

Sworn, subscribed to and acknowledged before me this ____ day of _____, 20___.

_____
Notary Public

My Commission expires:

Exhibit A
Legal Description

An irregular-shaped lot, piece or parcel of land situate, lying and being in the City of Norfolk, Virginia, said parcel being further described as follows:

BEGINNING at a point located at the intersection of the northern right-of-way line of Northampton Boulevard (U.S. Route 13) and the western right-of-way of the Highway 64 Entrance Ramp (G-2) opposite Station 388+11.94, as shown on the State of Virginia Highway Project #0064-122-070 R/W 203 plan (Route 64), Sheet No. 502-6; thence running along the northern right-of-way line of Northampton Boulevard (U.S. Route 13) from the point of beginning in a southwesterly direction along a curve turning to the right having a radius of 1788.42 feet, chord bearing of S82°25'44"W, and a chord distance of 112.00 feet to a point; thence, along a bearing of N01°03'03"W for a distance of 13.37 feet to a point; thence, along a bearing of S89°15'46"W for a distance of 117.07 feet to a point; thence, along a bearing of N55°01'55"W for a distance of 52.30 feet to a point; thence, along a bearing of S89°14'34"W for a distance of 101.00 feet to a point; thence, along a bearing of S54°24'43"W for a distance of 65.77 feet to a point; thence, along a bearing of S00°44'14"E for a distance of 13.39 feet to a point; said point being located on the northern right-of-way line of Northampton Boulevard (U.S. Route 13) thence, along a bearing of S89°16'49"W for a distance of 54.28 feet to a point; said point being 25.00 feet, more or less, from the edge of water of Lake Wright established by the spillway elevation; thence, running along a bearing of N17°07'04"W for a distance of 26.50 feet to a point; said point being 25.00 feet, more or less, from the edge of water; thence, continuing following forty-one courses and distances being 25.00 feet, more or less, from the edge of water of Lake Wright established by the spillway elevation; thence, being along a bearing of N65°13'14"W for a distance of 80.14 feet to a point; thence, along a bearing of N56°27'51"W for a distance of 31.90 feet to a point; thence, along a bearing of N45°51'48"W for a distance of 26.26 feet to a point; thence, along a bearing of N34°37'49"W for a distance of 21.13 feet to a point; thence, along a bearing of N12°13'55"W for a distance of 11.16 feet to a point; thence, along a bearing of N17°05'45"E for a distance of 19.39 feet to a point; thence, along a bearing of N14°52'07"W for a distance of 30.46 feet to a point; thence, along a bearing of N40°29'49"W for a distance of 33.66 feet to a point; thence, along a bearing of N56°39'38"W for a distance of 18.67 feet to a point; thence, along a bearing of N75°23'14"W for a distance of 27.69 feet to a point; thence, along a bearing of N64°05'54"W for a distance of 52.42 feet to a point; thence, along a bearing of N80°31'41"W for a distance of 34.33 feet to a point; thence, along a bearing of N71°49'15"W for a distance of 41.53 feet to a point; thence, along a bearing of N82°29'40"W for a distance of 62.10 feet to a point; thence, along a bearing of S78°34'23"W for a distance of 33.32 feet to a point; thence, along a bearing of S68°51'01"W for a distance of 63.15 feet to a point; thence, along a bearing of S59°59'41"W for a distance of 17.39 feet to a point; thence, along a bearing of S71°37'39"W for a distance of 14.39 feet to a point; thence, along a bearing of N24°05'47"W for a distance of 17.04 feet to a point; thence, along a bearing of N09°03'46"W for a distance of 36.26 feet to a point; thence, along a bearing of N14°59'03"W for a distance of 51.14 feet to a point; thence, along a bearing of N07°16'46"W for a distance of 47.39 feet to a point; thence, along a bearing of N18°29'36"W for a distance of 20.16 feet to a point; thence, along a bearing of N72°20'07"E for a distance of 48.64 feet to a point; thence, along a bearing of N32°43'21"E for a distance of 27.89 feet to a point; thence, along a bearing of N02°23'58"E for a distance of 51.28 feet to a point; thence, along a bearing of N21°27'40"W for a distance of 21.07 feet to a point; thence, along a bearing of N15°40'28"E for a distance of 62.06 feet to a point; thence, along a bearing of N53°09'44"E for a distance of 27.52 feet to a point; thence, along a bearing of N69°38'59"E for a distance of 43.06 feet to a point; thence, along a bearing of N57°07'54"E for a distance of 53.39 feet to a point; thence, along a bearing of N39°14'47"E for a distance of 81.39 feet to a point; thence, along a bearing of N13°27'01"E for a distance of 34.35 feet to a point; thence, along a bearing of N35°21'45"E for a distance of 15.34 feet to a point; thence, along a bearing of N47°39'47"E for a distance of 35.35 feet to a point; thence, along a bearing of N25°51'08"E for a distance of 37.01 feet to a point; thence, along a bearing of N19°07'59"E for a distance of 16.52 feet to a point; thence, along a bearing of N39°59'49"E for a distance of 20.33 feet to a point; thence, along a bearing of N61°32'05"E for a distance of 20.74 feet to a point; thence, along a bearing of N86°30'28"E for a distance of 35.14 feet to a point; thence, along a bearing of

N38°14'16"E for a distance of 46.84 feet to a point; thence, along a bearing of N15°57'32"E for a distance of 42.86 feet to a point being 25.00 feet, more or less, from the edge of water of Lake Wright established by the spillway elevation; thence, along a bearing of N46°45'45"E for a distance of 324.54 feet to a point; said point being located on the southwestern right-of-way line of Highway 64; thence, continuing along the variable width right-of-way of Highway 64 along a bearing of S51°16'23"E for a distance of 76.60 feet to a point; thence, along a bearing of S46°56'31"E for a distance of 291.61 feet to a point; thence, along a bearing of S41°34'37"E for a distance of 387.74 feet to a point; thence, along a bearing of S41°00'22"E for a distance of 158.44 feet to a point; said point being located at the intersection of the southwestern right-of-way line of Highway 64 and the western right-of-way line of the Highway 64 Ramp; thence, turning and running along the western right-of-way line of the Highway Ramp curving to the left, having a radius of 586.09 feet, chord bearing of S42°10'35"W, an arc length of 230.78 feet to a point; thence, along a bearing of S30°37'13"W for a distance of 111.58 feet to a point; thence, turning along a curve to the left having a radius of 596.09 feet, chord bearing of S11°22'19"W, and an arc length of 181.76 feet to the Point of Beginning.

The above-described parcel contains 18.871 acres of land, more or less.

Exhibit F

IKEA'S ANTI-CORRUPTION POLICY

IKEA®

Reg. IKEA Group Policy on Anti Corruption

To all potential suppliers,

We would like to inform you of the IKEA Group Policy on Anti Corruption which is attached to this document and which applies to all contracts entered into by or on behalf of IKEA.

It is an IKEA policy not to allow any form of corruption. We believe in fair and honest business dealings and believe that gifts between business associates or trading partners are unnecessary and may even be detrimental to the development of a cordial and mutually beneficial business relationship.

All our staff are aware of this Policy and they know that any breach may result in disciplinary action. In certain circumstances, we may also consider other appropriate measures under the appropriate legislation.

As we consider the IKEA Group Policy on Anti Corruption as one of our most important business ethics principles, we encourage you and your associates to report to IKEA any attempt by any member of our staff to solicit any advantage from your company.

In addition to the IKEA Group Policy on Anti Corruption, Conflict of Interest must be avoided. A Conflict of Interest occurs when an individual or organization is involved in multiple interests, one of which could possibly corrupt the motivation to act in the interest of the IKEA Group. Any potential Conflict of Interest must be disclosed.

We will further take appropriate action, should it come to our knowledge that any form of advantage is proposed or given to any of our staff, construction partners or statutory bodies from you or any of your associates, or should you withhold necessary information as regards to these matters.

It is specifically understood by both parties that violation of the IKEA Group Policy on Anti Corruption will constitute a material breach of contract which entitles us to enforce our rights under any contract or agreement between our two companies, including, but not limited to, immediate termination of such contract or agreement.

Please confirm that you have read and understood and agree to comply with the content of this letter and the attached Policy by signing below and returning one copy to IKEA at the address below. Please keep one copy for your record.

Place, date

_____

IKEA Company Representative

Contents Approved:

_____

Director, Dept. of Development

Approved as to Form and Correctness:

_____

Assistant City Attorney

CITY OF NORFOLK

_____

Marcus D. Jones, City Manager

ATTEST:

_____

City Clerk

IKEA Group Policy on Anti Corruption

Document reference: IGP 1001

Issue date:
1 October 2012

Revision date:
N/A

Version:
Version 1.0

Related master documents:
IKEA Group Code of Conduct

Issued by:
Management Board of Ingka Holding B.V.

Content owner:
IKEA Group Chief Risk Officer (CRO)

Applicability:
IKEA Group
(Ingka Holding B.V. and all its controlled entities)

SUMMARY:

Trust, integrity and honesty are key values of IKEA Group. Corruption is contradictory to the objective of doing good business. It damages the confidence our co-workers, suppliers, customers and other stakeholders have in IKEA.

The IKEA Group has zero tolerance towards corruption in any form.

1. Policy scope and objective

IKEA Group requires that all co-workers and business partners shall comply with relevant laws, regulations and applicable provisions when conducting business. This policy and any corresponding standard may go beyond such laws, regulations and provisions.

The objective of this policy is to define the IKEA Group Standpoint on Corruption.

The IKEA Group Policy on Anti Corruption is applicable to IKEA Group co-workers and IKEA Group business partners.

2. Definitions

Corruption is the misuse of an official duty for unofficial and undue personal advantages or advantages to others. Corruption also includes fraud and bribery as well as benefits, favours and omissions which are considered illegal, unethical or a breach of trust.

Facilitation Payment is a payment to a government official to facilitate a service or activity which the public official is legally obliged to perform without such payment.

3. Policy standpoint

Trust, integrity and honesty are key values of IKEA Group. Corruption is contradictory to the objective of doing good business. It damages the confidence our co-workers, suppliers, customers and other stakeholders have in IKEA. Furthermore, Corruption undermines the rule of law, distorts markets, and denies the many people their rightful share of resources.

The IKEA Group has zero tolerance towards Corruption in any form.

- No one, co-worker or business partner, acting on behalf of IKEA Group or with whom IKEA Group has a relation (including suppliers, vendors and contractors) may directly or indirectly request, offer, pay, accept or receive bribes or conduct other corrupt practices.
- IKEA Group does not allow any form of Facilitation Payments.
- IKEA Group co-workers do not ask for gifts or hospitality and are strongly advised not to accept and/or provide gifts or hospitality from or to any business partner or third party. If and when IKEA Group accepts or provides gifts this is done in a transparent and approved way.

Non compliance with this policy by co-workers shall result in internal disciplinary action and may lead to termination of employment contract and possibly to legal prosecution.

Any act by an IKEA business partner contravening the content or intent of this policy may prompt the termination of the business relation.

City of NORFOLK

C: Dir., Department of Development

To the Honorable Council
City of Norfolk, Virginia

June 28, 2016

From: Charles E. Rigney, Sr., Director
Department of Development

Subject: Cooperation Agreement with the Economic Development Authority of the City of Norfolk

Reviewed: Peter H. Chapman, Deputy City Manager

Ward/Superward: 4/7

Approved: Marcus D. Jones, City Manager

Item Number: **R-1**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Economic Development Authority of the City of Norfolk

III. **Description:**
This agenda item is an ordinance authorizing the City Manager to enter into a cooperation agreement with the Economic Development Authority (the "EDA").

IV. **Analysis**
This ordinance allows the City of Norfolk (the "City") to provide up to five million dollars ($5,000,000) in a revenue sharing performance agreement with the EDA to induce a significant national retailer to locate at 6000 Northampton Boulevard. The retail is an approximate 350,000 square foot store with an exclusive parking field of at least 1,200 spaces. This is a significant economic development opportunity for the City, a positive factor in achieving the economic development objectives of the City, and worthy of inducement. The costs will partially offset infrastructure related costs related to the development of this specific site.

V. **Financial Impact**
- The City has agreed to up to $5 million to help offset infrastructure related costs of the development site and induce a national retailer to locate on the property.
- The project is estimated to be a $75 million investment and will generate at least $2.5 million in direct city tax revenues.
- The project would create approximately 250 full time jobs and nearly 500 construction jobs.

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

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Economic Development Authority, the Department of Development and the City Attorney's Office.

Supporting Material from the Department of Development:

- Ordinance
- Cooperation Agreement
- Exhibit A – Grant Agreement

6/14/2016mr

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
Department of Development

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A COOPERATION AGREEMENT WITH THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NORFOLK.

– – –

WHEREAS, the City of Norfolk and the Economic Development Authority of the City of Norfolk (the "Authority") are vitally concerned with the attraction and retention of new businesses;

WHEREAS, the City is presently negotiating the sale of property located at 6000 Northampton Boulevard in the City of Norfolk (the "Property") and has presented a proposed Agreement of Sale to the City Council of the City of Norfolk for its approval;

WHEREAS, the proposed Agreement of Sale provides for the purchase and development of the Property for the Proposed Retail Use, as such term is defined in the Agreement of Sale, of an approximately 350,000 square foot retail store with an exclusive parking field of at least 1,200 spaces on the Property;

WHEREAS, development of the Property for Grantee's Proposed Retail Use and the ongoing use of the Property by

Grantee for the Proposed Retail Use have been found by both the Directors of the Authority and the City Council of the City to constitute a significant economic development opportunity for the City, a positive factor in achieving the economic development objectives of the City, and worthy of inducement;

WHEREAS, as inducement for the buyer to enter into the Agreement of Sale and to construct, equip and operate the Property for the Proposed Retail Use, the Authority and the City have determined that it is advisable to enter into a Cooperation Agreement, in the form attached hereto as Exhibit A, wherein the City and the Authority agree to the terms and conditions upon which the Authority will make certain payments to the buyer of the Property up to the maximum grant amount of Five Million and 00/100 Dollars ($5,000,000.00);

WHEREAS, Section 15.2-4905 (12) of the Code authorizes the Authority:

> to accept contributions, grants and other financial assistance from . . . the Commonwealth, or any political subdivision, agency, or public instrumentality of the Commonwealth, for or in aid of the construction, acquisition, ownership, maintenance or repair of the authority facilities, . . . or in order to make loans in furtherance of the purposes of this chapter of such money, contributions, grants, and

other financial assistance, and to this end the authority shall have the power to comply with such conditions and to execute such agreements . . . as may be necessary, convenient or desirable and to agree to such terms and conditions as may be imposed;

WHEREAS, Section 15.2-4901 of the Code concludes with the statement that "This chapter shall be liberally construed in conformity with these intentions," evidencing the legislative intent that all aspects of Title 15.2, Chapter 49 be broadly interpreted in order to promote and facilitate economic development in the Commonwealth and its localities; now, therefore

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

Section 1:- That the City Manager is authorized to enter into the Cooperation Agreement attached hereto.

Section 2:- That the City Manager is authorized to correct, amend, or revise the Cooperation Agreement as he deems necessary in order to carry out the intent of the Council and to execute the Cooperation 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 from and after thirty (30) days from the date of its adoption.

COOPERATION AGREEMENT

(City of Norfolk - EDA)

THIS COOPERATION AGREEMENT ("Cooperation Agreement") is made and entered into as of the ____ day of _____, 20__, by and between the **CITY OF NORFOLK, VIRGINIA,** a municipal corporation of the Commonwealth of Virginia (the "City") and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NORFOLK,** a duly organized and existing body corporate and politic constituting a political subdivision of the Commonwealth of Virginia (the "Authority").

RECITALS

WHEREAS, the Authority is duly established and its existence was validated pursuant to the Virginia Industrial Development and Revenue Bond Act (the "Act"), Chapter 49, Title 15.2 of the Code of Virginia of 1950, as amended (the "Code");

WHEREAS, the Authority is empowered under the Act to cooperate with the City in actions taken for the purpose of promoting economic development and the commerce, safety, health, welfare, convenience or prosperity of citizens of Virginia within the Authority's area of operation (which in the Authority's case is coextensive with the territorial boundaries of the City);

WHEREAS, the City and the Authority are vitally concerned with the attraction and retention of new businesses;

WHEREAS, the City and Ikea Property, Inc. (the "Grantee") have entered that certain Agreement of Sale, dated as of _____, 2016 for property known as "Lake Wright East" containing 18.78 acres, more or less, and located at 6000 Northampton Boulevard in the City of Norfolk (the "Property");

WHEREAS, the Agreement of Sale provides for the purchase and development by Grantee for Grantee's Intended Improvements, as such term is defined in the Agreement of Sale, of an approximately 350,000 square foot blue and yellow IKEA retail furniture and furnishings store (including any other uses found from time to time in any other IKEA retail store), with an exclusive parking field of at least 1,200 spaces, together with all of Grantee's required colors and trade dress and building and site signage and flags, including a navigational sign tower at least 120 feet in height, all related on-site and off-site improvements, and any and all development and contract rights and all other appurtenances thereto necessary to develop the store and other improvements contemplated;

WHEREAS, development of the Property for Grantee's Intended Improvements and the ongoing use of the Property by Grantee for the Intended Improvements have been found by both the Directors of the Authority and the City Council of the City to constitute a significant economic development opportunity for the City, a positive factor in achieving the economic development objectives of the City, and worthy of inducement, as set forth in the resolutions adopted by the Authority and actions taken by the City Council approving the terms herein;

WHEREAS, as inducement for the Grantee to enter into the Agreement of Sale and to construct, equip and operate the Property for the Intended Improvements, the Authority and the

City have determined that it is advisable for the Authority to enter into a Grant Agreement, in the form attached to the Agreement of Sale as Exhibit D and attached hereto as Exhibit A, wherein the Authority agrees to make certain payments to Grantee up to the maximum grant amount of Five Million and 00/100 Dollars ($5,000,000.00) upon the terms and conditions set forth in the Grant Agreement;

WHEREAS, Section 15.2-4905 (12) of the Code authorizes the Authority:

> to accept contributions, grants and other financial assistance from . . . the Commonwealth, or any political subdivision, agency, or public instrumentality of the Commonwealth, for or in aid of the construction, acquisition, ownership, maintenance or repair of the authority facilities, . . . or in order to make loans in furtherance of the purposes of this chapter of such money, contributions, grants, and other financial assistance, and to this end the authority shall have the power to comply with such conditions and to execute such agreements . . . as may be necessary, convenient or desirable and to agree to such terms and conditions as may be imposed;

WHEREAS, Section 15.2-4901 of the Code concludes with the statement that "This chapter shall be liberally construed in conformity with these intentions," evidencing the legislative intent that all aspects of Title 15.2, Chapter 49 be broadly interpreted in order to promote and facilitate economic development in the Commonwealth and its localities;

WHEREAS, on June 28, 2016, the Council of the City adopted Ordinance No. _____, approving this Cooperation Agreement, authorizing the execution and delivery hereof on behalf of the City and the performance of all obligations undertaken by the City under this Cooperation Agreement;

WHEREAS, on _____, 2016, the Board of Directors of the Authority adopted a resolution approving the form and substance of the Agreement and this Cooperation Agreement, authorizing the execution and delivery thereof and hereof on behalf of the Authority, and authorizing the performance of, and agreeing to perform, all obligations undertaken by the Authority under the Agreement and this Cooperation Agreement; and

WHEREAS, the parties hereto desire to enter into this Cooperation Agreement for the purpose of setting forth their understandings and agreements in connection with the Purchase Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the public benefits to accrue to the City, the Authority, South Hampton Roads and the Commonwealth, and the inhabitants thereof from the development and continued operation of the Property for the Intended Improvements and in consideration of the mutual covenants hereinafter set forth, the Authority and the City agree as follows:

1. Appropriation of Funds. The City agrees, subject to appropriation, to transfer funds to the Authority to enable the Authority to fulfill its obligations under the Grant

Agreement attached hereto as Exhibit A. This Cooperation Agreement is subject to the appropriation of funds by the City Council of the City of Norfolk. No amounts have been appropriated, and, unless and until such appropriation(s) is made, the City is without funding obligation.

2. Authority Obligations. The Authority agrees that any funds appropriated by the City pursuant to this Cooperation Agreement shall be used exclusively for the purposes of making the required payments to Grantee under the Grant Agreement.

3. Non-Discrimination. In carrying out this Cooperation Agreement, the Authority and the City agree not to discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin and agree to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, color, religion, sex, age or national origin. Such action shall include, but not be limited to employment, promotion, demotion, termination, rates of pay, other compensation, and selection for training including apprenticeship.

4. Applicable Law. This Cooperation Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Virginia. In the event of litigation hereunder, venue shall be in the Circuit Court of the City of Norfolk.

5. Notices. All notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be delivered by hand or by courier service (including reputable overnight courier service such as UPS), or sent by registered or certified mail, return receipt requested, bearing adequate postage and properly addressed as provided below. Each notice given by registered or certified mail shall be deemed to be given by the sender when mailed; each notice delivered by hand or by courier service shall be deemed to have been given and received when actually received by the party intended to receive such notice or when such party refuses to accept delivery of such notice. Upon a change of address by either party, such party shall give written notice of such change to the other party in accordance with the foregoing. Inability to deliver because of changed address or status of which no notice was given shall be deemed to be receipt of the notice sent, effective as of the third day after such notice is sent.

If to the Authority:

Economic Development Authority of the City of Norfolk
500 East Main Street, Suite 1500
Norfolk, VA 23510
Attention: Executive Director

With a copy to:

Kaufman & Canoles, P.C.
150 W. Main Street Suite 2100
Norfolk, Virginia 23510
Attention: George Consolvo, Esq.

If to the City:

City Manager
City of Norfolk
810 Union Street
1101 City Hall Building
Norfolk, Virginia 23510

With a copy to:

City Attorney
City of Norfolk
810 Union Street, Suite 900
Norfolk, Virginia 23510

6. Binding on Successors in Interest. This Cooperation Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto; provided, however, that in no event may this Cooperation Agreement or any of the rights, benefits, duties or obligations of the parties hereto be assigned, transferred or otherwise disposed of without the prior written consent of the other, which consent neither party shall be obligated to give.

7. Entire Agreement. This Cooperation Agreement constitutes the final, complete and exclusive written expression of the intents of the parties with respect to the subject matter hereof which will supersede all previous communications, representations, agreements, promises or statements.

8. Severability. If any one or more of the provisions contained in this Cooperation Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Cooperation Agreement shall be construed as if such invalid, illegal or unenforceable provision was not contained herein.

9. Amendment, Modification, Alteration. No amendment, modification or alteration of the terms of this Cooperation Agreement shall be binding unless in writing, dated subsequent to the date hereon and duly executed by the parties herein.

10. Headings. The titles of articles and sections of this Cooperation Agreement are for reference purposes only and shall be of no binding effect.

11. Waiver. The waiver by either party of any default or breach by the other party of any of the provisions of this Cooperation Agreement shall not be deemed a continuing waiver or waiver of any other breach by the other party of the same or another provision of this Cooperation Agreement.

12. Compliance with Laws. The parties shall comply with all applicable laws, ordinances and regulations with regard to any work, use, construction, and operation done or conducted with regard to this Cooperation Agreement.

13. Rights and Remedies Cumulative. The rights and remedies provided by this Cooperation Agreement are cumulative and the use of any right or remedy by either party shall not preclude or waive its rights to use any and all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

14. Authority to Execute Agreement. Each party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Cooperation Agreement and to perform its duties under this Cooperation Agreement; the person executing this Cooperation Agreement on its behalf has the authority to do so; upon execution and delivery of this Cooperation Agreement by the parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Cooperation Agreement does not violate any bylaw, charter, regulation, law or other governing authority of the party.

15. Counterparts. This Cooperation Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

16. No Third Party Beneficiaries. This Cooperation Agreement is intended solely for the benefit of the parties hereto. This Cooperation Agreement is not intended and shall not be construed to benefit or create any rights for any third party. It is the express intent of the parties hereto that there be no third party beneficiaries hereof.

[SIGNATURE PAGES FOLLOW.]

WITNESS the execution of this Cooperation Agreement (City of Norfolk-EDA) by the duly authorized officials of the City and the Authority as of the day and year first set forth above.

CITY OF NORFOLK

By: _____
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO CONTENTS:

_____
Director, Department of Development

APPROVED AS TO FORM AND CORRECTNESS:

_____
Assistant City Attorney

[SIGNATURE PAGES CONTINUE ON NEXT PAGE]

[CONTINUATION OF SIGNATURE PAGES TO COOPERATION AGREEMENT (CITY OF NORFOLK - EDA)]

ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NORFOLK

By:_____
Name :_____
Title :_____

APPROVED AS TO CONTENTS:

_____
Executive Director, Economic Development
Authority of the City of Norfolk

APPROVED AS TO FORM AND CORRECTNESS:

_____
Counsel to the Economic Development
Authority of the City of Norfolk

EXHIBIT A

GRANT AGREEMENT

THIS GRANT AGREEMENT is made as of the ___ day of _____, 20__, between the ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NORFOLK a duly organized and existing political subdivision of the Commonwealth of Virginia (the "Authority"), and IKEA PROPERTY, INC., a Delaware corporation ("Grantee").

WITNESSETH:

WHEREAS, the City of Norfolk, Virginia (the "City") and Grantee have entered that certain Agreement of Sale dated _____ __, 2016, for certain real property known as "Lake Wright East" containing 18.78 acres, more or less, and located at 6000 Northampton Boulevard in the City (the "Property"),

WHEREAS, in the Agreement of Sale the City agreed to provide incentives to the Grantee, through the Authority, upon the term and conditions set forth herein;

WHEREAS, the Agreement of Sale provides for the purchase and development by Grantee for the "Intended Improvements," as defined below; and

WHEREAS, development of the Property for Grantee's Intended Improvements and the ongoing use of the Property by Grantee for the Intended Improvements has been found by both the Directors of the Authority and the City Council of the City (the "City Council") to constitute a significant economic development opportunity for the City, a positive factor in achieving the economic development objectives of the City, and worthy of inducement, as set forth in the resolutions adopted by the Authority and actions taken by the City Council approving the terms herein.

NOW, THEREFORE, WITNESSETH:

1. Definitions.

The following terms shall have the meanings set forth unless the context clearly requires otherwise:

1.1. "Intended Improvements" means and includes an approximately 350,000 square foot blue and yellow IKEA retail furniture and furnishings store (including any other uses found from time to time in any other IKEA retail store), with an exclusive parking field of at least 1,200 spaces, together with all of Buyer's required colors and trade dress and building and site signage and flags, including a navigational sign tower at least 120 feet in height, all related on-site and off-site improvements, and any and all development and contract rights and all other appurtenances thereto necessary to develop the store and other improvements contemplated, to be constructed, equipped, occupied and operated by Grantee on the Property on a continuous basis.

1.2. "Calendar Year" means the calendar year beginning January 1 and ending December 31.

{00537632;v4}

1.3. "Maximum Grant Amount" means the maximum cumulative amount to be paid to Grantee over the term of the grant which shall be Five Million Dollars ($5,000,000.00).

1.4. "Grant" means the annual sums to be transferred to the Grantee pursuant to the terms of this Agreement as an inducement for the Grantee to purchase the Property and to construct, equip, occupy and operate its business operations for the Intended Improvements at the Property, subject to the Maximum Grant Amount.

2. The Grant.

2.1. *Amount of the Grant.* Subject to the conditions and limits set forth in Sections 3.1 and 3.2 below, subject to the Maximum Grant Amount, and subject to annual appropriation and transfer of funds to the Authority by the City, the Authority will pay to Grantee a sum of money each year during the Grant Term (hereinafter defined), which annual grant payments shall be calculated using the following performance-based formula:

One-half percent (0.5%) of all gross receipts from the Grantee's business operations for the Intended Improvements at the Property during the applicable Calendar Year.

2.2. *Term of the Grant.* The term of the Grant (the "Grant Term") shall commence upon completion of construction of the Improvements (the "Commencement Date"), as evidenced by the issuance of a Certificate of Occupancy, and the opening of the Grantee's business operations at the Property for the Intended Improvements. The Grant Term shall expire upon the first to occur of (A) when the Maximum Grant Amount has been paid to Grantee or (B) upon payment by the Authority of the fifteenth (15th) annual Grant payment to the Grantee. The Grant payments shall commence on the first August 1 following the end of the first full Calendar Year after the Commencement Date and, subject to the terms and conditions set forth herein, shall be paid on each August 1 thereafter during the Grant Term. In the event of an abandonment of Grantee's business operations at the Property for the Intended Improvements for a period of more than six (6) continuous months for reasons other than a casualty or other material damage, Act of God, or other force majeure event outside of the reasonable control of Grantee (in any such case, a "Force Majeure Event"), the Grant Term shall terminate immediately and no further Grant payments shall be made by the Authority.

3. Conditions of the Grant.

The obligation of the Authority to disburse the Grant is subject to the satisfaction of the conditions set forth below.

3.1. *Conditions to Initial Disbursement.* The initial disbursement of the Grant by the Authority shall occur by no later than the first August 1 following the end of the first full Calendar Year after the Commencement Date provided that the following conditions have been satisfied:

A. The Commencement Date shall have occurred.

B. The representations and warranties set forth below shall be true and correct in all material respects as of the date of this Agreement and shall continue to be true and

correct in all material respects at the time of the proposed disbursement of the initial Grant payment.

C. The City shall have calculated and advised the Authority in writing of the amount of the initial disbursement, the City Council of the City shall have appropriated funds for the then current Grant payment and shall have transferred such funds to the Authority. The City's calculation of the amount of the initial Grant payment shall be deemed accurate and correct absent manifest error.

3.2. *Conditions to Each Annual Grant Payment*. Each subsequent disbursement of the Grant shall be subject to the satisfaction of the following conditions:

A. The conditions to the initial annual Grant payment shall have been satisfied.

B. Subject to the occurrence of a Force Majeure Event, Grantee shall have continuously operated its business for the Intended Improvements at the Property. For purposes of this Agreement, "continuous business operations" and to "continuously operate" shall mean to continue to operate Grantee's business for the Intended Improvements every weekday during normal business hours, excluding holidays.

C. The representations and warranties set forth below shall be true and correct in all material respects as of the date of this Agreement, and shall continue to be true and correct in all material respects at the time of the proposed disbursement of each year's Grant payment.

D. Based upon such documentation as the City deems appropriate, the City shall have calculated and advised the Authority in writing of the amount of the current Grant payment, the City Council of the City shall have appropriated funds for the Grant, and the City shall have transferred such funds to the Authority. The City's calculation of the amount of each annual Grant payment shall be deemed accurate and correct absent manifest error.

4. Representations and Warranties.

Grantee represents and warrants to the Authority that:

4.1. *Due Organization, Authority and Qualification*. Grantee is a duly organized and validly existing limited liability company under the laws of the State of North Carolina, is registered to do business in Virginia, is in good standing in the state of its organization, and has the full power and authority to own its properties and other assets and to transact the Intended Improvements at the Property.

4.2. *Taxes*. Grantee has filed and shall file all tax returns which are required to be filed in the Commonwealth of Virginia and elsewhere and has paid all taxes (including interest and penalties) which have become due pursuant to such returns or pursuant to any assessment or notice of tax claim or deficiency received by it. All tax liabilities within the Commonwealth of Virginia and elsewhere were adequately provided for when due and are now shown current on the books of Grantee. No material tax liability has been asserted by the Internal Revenue Service, the

Commonwealth of Virginia, the City, or any other jurisdiction for taxes (or interest or penalties thereon) in excess of those already paid.

4.3. *Compliance with Laws*. To Grantee's best knowledge, Grantee and all of its assets and properties located in the Commonwealth of Virginia, including without limitation the Property, are and shall be in compliance in all material respects with all applicable laws, rules and regulations of each Federal, state, municipal or other governmental department, agency or authority, including without limitation the Americans with Disabilities Act of 1990, the regulations promulgated thereunder, and all applicable environmental, land use and zoning laws and regulations, to the extent applicable.

4.4. *Information Necessary to Calculate Grant Payments*. Reports of gross receipts and other relevant documents required by law to be filed with the Tax Commissioner of the Commonwealth of Virginia or the Commissioner of Revenue of the City for the applicable tax year must be timely filed and copies delivered to the Authority (collectively, the "Required Information"), which shall then provide copies of such Required Information to the City. Grantee's failure to timely file Required Information with the Authority shall not jeopardize the payment of any Grant payment unless and until the Authority notifies Grantee of Grantee's failure to provide Required Information and Grantee does not cure such failure within thirty (30) days of Grantee's receipt of such notice.

5. General Matters.

5.1. *Authority Obligations Subject to Appropriation; Exculpation*.

A. All obligations of the Authority hereunder for the disbursement of the Grant and any other payment of money are subject to and expressly conditioned upon funds being appropriated, calculated and approved for such purpose by the City Council, the amount of Grantee's grant payment being calculated and approved by the City, and the funds being delivered to the Authority, and shall not at any time constitute a legal obligation of the Authority for the disbursement of the Grant or the payment of money except to the extent so appropriated and delivered.

B. Neither the directors of the Authority nor any person executing this Agreement on behalf of either party shall be liable personally thereon by reason of the execution and delivery hereof. This Agreement is not, and shall not be deemed to constitute, a general obligation of the Commonwealth of Virginia or any political subdivision thereof, including the Authority and the City, and neither the Commonwealth of Virginia nor any such political subdivision thereof shall be liable thereon, nor in any event shall this Agreement be payable out of funds or properties other than as set forth herein. This Agreement shall not constitute an indebtedness within the meaning of any Commonwealth of Virginia municipal debt limitation or restriction.

C. No covenant, agreement or obligation contained in this Agreement shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of the Authority or Grantee in his or her individual capacity, and no such director, officer, employee or agent shall be subject to any liability under this Agreement or with respect to any other action taken by him or her.

5.2. *Assignment*. Grantee may not assign its rights under this Agreement without the prior written consent of the Authority and the City.

5.3. *Waiver*. The failure of the Authority or Grantee to insist upon strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy. No waiver by the Authority or Grantee of any term or provision of this Agreement shall be deemed to have been made unless expressed in writing and duly signed by the Authority or Grantee, as applicable.

5.4. *Severability*. If any clause or provision of this Agreement is or becomes illegal, invalid or unenforceable because of present of future laws or any rule or regulation of any governmental body or entity, then the remaining parts of this Agreement shall not be affected, and said remaining parts of this Agreement shall be enforceable, to the extent they are consistent with the spirit and intent of this Agreement in its original form.

5.5. *Licensee and Permits*. It shall be the ultimate responsibility of Grantee at its expense to secure all licenses and permits required to be obtained by it with respect to construction, completion, equipping and occupancy of the Improvements.

5.6. *Notices Applicable Law*. This Agreement shall be construed under and shall be governed by the laws of the Commonwealth of Virginia. In the event of a conflict arising under this Agreement, venue shall be in the Circuit Court of the City of Norfolk.

5.7. *Interpretation*. For the purpose of construing this Agreement, unless the context indicates otherwise, words in the singular number shall be deemed to include words in the plural number and vice versa, words in one gender shall be deemed to include words in other genders, and the word "person" shall be deemed to include a corporation, company or partnership. Headings or Articles and Sections are inserted only for convenience and are not, and shall not be deemed a limitation on the scope of the particular Articles or Sections to which they refer.

5.8. *Notices*. All notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be delivered by hand or by courier service (including reputable overnight courier service such as UPS), or sent by registered or certified mail, return receipt requested, bearing adequate postage and properly addressed as provided below. Each notice given by mail, registered or certified, shall be deemed to be given by the sender when mailed; each notice delivered by hand or by courier service shall be deemed to have been given and received when actually received by the party intended to receive such notice or when such party refuses to accept delivery of such notice. Upon a change of address by either party, such party shall give written notice of such change to the other party in accordance with the foregoing. Inability to deliver because of changed address or status of which no notice was given shall be deemed to be receipt of the notice sent, effective as of the third day after such notice is sent.

To the Authority: Economic Development Authority of the City of Norfolk

500 E. Main Street, Suite 1500
Norfolk, VA 23510

With a copy to: Kaufman & Canoles, P.C.
150 W. Main Street, Suite 2100
Norfolk, VA 23510
Attn: George L. Consolvo

And with a copy to: City Attorney
City of Norfolk
810 Union Street, Suite 900
Norfolk, VA 23510

To Grantee: IKEA Property, Inc.
420 Alan Wood Road
Conshohocken, PA 19428
Attention: President
Phone: 610-834-0180
Email address: douglas.greenholz2@ikea.com

With a copy to: Larsson & Scheuritzel P.C.
Centre Square West
1500 Market Street, Suite 3510
Philadelphia, PA 19102
Attention: David J. Larsson, Esq.

5.9. *Non-Discriminatory Policies.*

A. Grantee will comply with all applicable laws regarding the discrimination of employees or applicants for employment because of the race, religion, color, sex or national origin of the employee or applicant for employment. Grantee agrees to post, to the extent required by any applicable laws, in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. Grantee, in all solicitations or advertisements for employees placed by or on behalf of Grantee, will state, to the extent required by any applicable laws, that Grantee is an equal opportunity employer.

C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

5.10. *Third Party Beneficiaries.* The City shall be a third party beneficiary of this Agreement. Except for the City, this Agreement is intended solely for the benefit of the parties hereto. Except for the City, this Agreement is not intended and shall not be construed to benefit or create any rights for any third party. It is the express intent of the parties hereto that there be no third party beneficiaries hereof, except for the City.

5.11. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties with respect to the Grant, supersedes all prior understandings and writings and may be amended or modified only by a writing signed by the Authority and Grantee.

WITNESS the following signatures, thereunto duly authorized:

ECONOMIC DEVELOPMENT
AUTHORITY OF THE CITY OF NORFOLK

By: _____
Name: _____
Title: _____
Date: _____

IKEA PROPERTY, INC., a Delaware corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM AND
CORRECTNESS:

_____
Counsel to the Economic Development
Authority of the City of Norfolk

C: Dir.,Department of Human Services

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

June 28, 2016

From: Steve Hawks, Director of Human Services

Subject: Acceptance of a Juvenile Accountability Block Grant award for $18,877 from the Virginia Department of Criminal Justice Services

Reviewed: Wynter C. Benda, Deputy City Manager

Ward/Superward: Citywide

Approved: Marcus D. Jones, City Manager

Item Number: **R-2**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description:**
This agenda item is an ordinance to accept a Juvenile Accountability Block Grant (the "grant") in the amount of $18,877 from the Virginia Department of Criminal Justice Services (the "VDCJS") and to appropriate and authorize the expenditure of the funds, as well as the required $2,097 of local matching funds, for total program funding in the amount of $20,974.

IV. **Analysis**
The grant funds are federal funds allocated to localities in Virginia. Cash match requirements are 10% of the total program funding. The Norfolk Virginia Juvenile Community Crime Control Act Planning Team Committee ("VJCCCA Committee") serves as the coordinated advisory committee for this grant. This grant provides funding to support efforts to strengthen the juvenile justice system by implementing accountability-based programs such as training programs for detention personnel to improve facility practices and programming, including activities to address requirements of the Prison Rape and Elimination Act.

V. **Financial Impact**
The grant award is for $18,877 in federal funds from the VDCJS. The local cash match of $2,097 will be paid from the Department of Human Services budget.

VI. **Environmental**
N/A

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

VII. Community Outreach/Notification

The coordination of program services will be carried out through the collaboration of the Norfolk Department of Human Services, Detention Center Service Unit, and the Norfolk VJCCCA Committee. Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of Human Services and the City Attorney's Office.

Supporting Material from the City Attorney's Office

- Ordinance

5/3/16 - bjl

Form and Correctness Approved: BAP

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT. Department of Human Services

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.

$ 20,974.00 — 2275-8-8985 ($2097) / 2275-8-9159 (18,877)
Account

_____ — 6/8/16
Director of Finance — Date

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE ACCEPTING $18,877 FROM THE VIRGINIA DEPARTMENT OF CRIMINAL JUSTICE SERVICES FOR THE JUVENILE ACCOUNTABILITY BLOCK GRANT PROGRAM, APPROPRIATING AND AUTHORIZING THE EXPENDITURE OF THE FUNDS AND $2,097 IN LOCAL CASH MATCHING FUNDS FOR THE PROGRAM FOR TOTAL PROGRAM FNDING IN THE AMOUNT OF $20,974.

- - -

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

Section 1:- That $18,877 from the Virginia Department of Criminal Justice Services is hereby accepted for the Juvenile Accountability Block Grant Program (the "Program").

Section 2:- That $18,877 is hereby appropriated and authorized for expenditure for the Program, according to the terms and conditions of the Grant, if and when the funds are made available from the Virginia Department of Criminal Justice Services Juvenile Accountability Block Grant Program.

Section 3:- That the expenditure of $2,097 is hereby authorized as the City's local cash match from funds heretofore appropriated for the Program.

Section 4:- That the City Manager is authorized to do all things necessary to receive the funds and to implement the Program.

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

C: Dir. Recreation Parks and Open Space

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

June 28, 2016

From: Darrell R. Crittendon, Director
Recreation Parks and Open Space

Subject: Amend and reordain the Norfolk City Code so as to add one new section, numbered 12-141.6, relating to the creation of 111 graves in the re-subdivision of 26-A in Calvary Cemetery Annex

Reviewed: Wynter C. Benda, Deputy City Manager

Ward/Superward: 3/7

Approved: Marcus D. Jones, City Manager

Item Number: **R-3**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk
Department of Recreation, Parks & Open Space

III. **Description:**
This agenda item is an ordinance to amend and reordain the *Norfolk City Code*, 1979, so as to add one new section, numbered 12-141.6, creating a new subdivision named Section 26-A in the Calvary Cemetery Annex.

IV. **Analysis**
There are less than ten available sites in the grave inventory at Calvary Cemetery. By establishing Section 26-A, 111 grave sites will be added to provide inventory for approximately three years, depending on the demand. Section 26-A is designated for single or companion graves, with upright monuments, and is configured in the traditional east-west layout. The development of Section 26-A is consistent with our Cemetery Master Plan which guides cemetery development. Paved roads will be closed in order to prepare for future development of the Cemetery.

V. **Financial Impact**
Prices for graves in Section 26-A will be $1,200 per grave. Pricing is consistent with similar inventory throughout the cemetery system.

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 of Norfolk's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter has been coordinated with the Department of Recreation, Parks and Open Space, the Department of Public Works, Division of Surveys and the City Attorney's Office.

Supporting Material from the Department of Recreation, Parks and Open Space:

- Ordinance
- Survey plat of Section 26-A
- Overall Map of Calvary Cemetery

6/3/2016 - wld

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT. Recreation, Parks and Open Space

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE TO AMEND AND REORDAIN THE NORFOLK CITY CODE, 1979, **SO AS TO** ADD ONE NEW SECTION, NUMBERED 12-141.6, RELATING TO THE CREATION OF 111 GRAVES IN THE RE-SUBDIVISION OF SECTION 26-A, IN A PORTION SOUTH OF EXISTING BLOCK 26, CALVARY CEMETERY ANNEX.

- - -

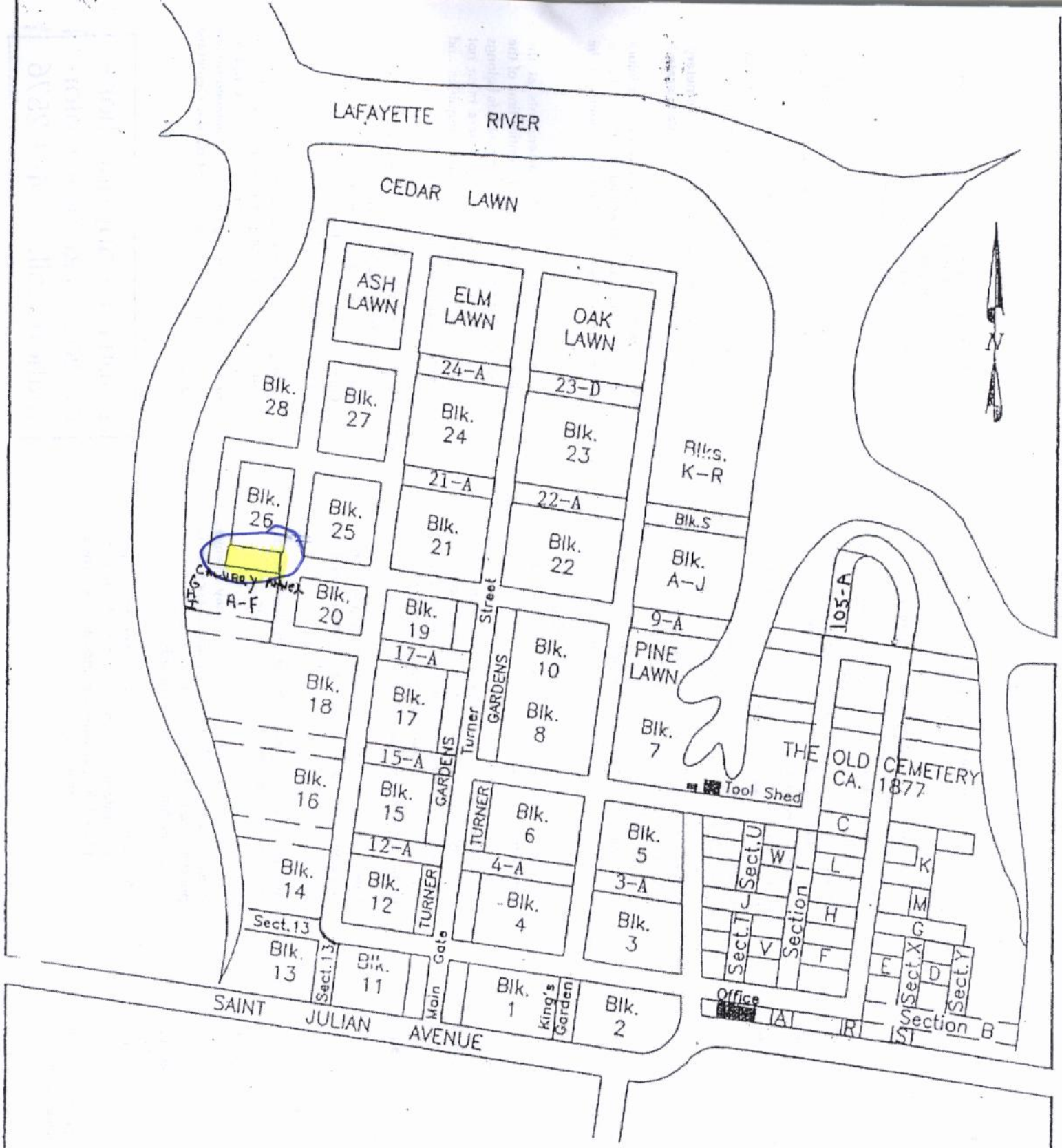
BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Norfolk City Code, 1979, is hereby amended and reordained by adding one new section relating to the creation of 111 graves in the re-subdivision of Section 26-A, in a portion south of existing block 26, Calvary Cemetery Annex, such section numbered and reading as follows:

Sec. 12-141.6. Section 26-A, Subdivision of Portion of Calvary Cemetery Annex.

The re-subdivision of the area, as shown on the plat entitled "Section 26-A Subdivision Of Portion Of Calvary Cemetery Annex South of Block 26 Norfolk, Virginia," showing new graves in Section 26-A dated May 23, 2016, prepared by the Division of Surveys, Department of Public Works, is hereby approved.

Section 2:- That this ordinance shall be in effect from and after its adoption.



MAP OF

CALVARY CEMETERY

OPERATED AND MAINTAINED
BY
BUREAU OF CEMETERIES
CITY OF NORFOLK
VIRGINIA

C: Dir., Department of Public Works

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

June 28, 2016

From: David Ricks, Director of Public Works

Subject: Encroach into the right-of-way at 328 W. 20th Street with lights and signage

Reviewed: Ronald H. Williams, Jr., Deputy City Manager

Ward/Superward: 2/6

Approved: Marcus D. Jones, City Manager

Item Number: **R-4**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** The Palace Shops South, LLC
3258 W. 20th Street
Norfolk, Virginia 23517

III. **Description:**
This agenda item is an ordinance permitting The Palace Shops South, LLC ("The Palace Shops") to encroach into the right-of-way at 328 W. 20th Street with lights and signage.

IV. **Analysis:**
An encroachment is an object or structure that infringes into the City of Norfolk's (the "City's") rights-of-way or property. *Norfolk City Code*, Section 42-10, requires all encroachments into the right-of-way to be approved by City Council. The encroachment in this location will allow The Palace Shops to enhance the façade and identify their building.

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

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. The encroachment was reviewed and recommended by the Norfolk Design Review Committee and the City Planning Commission.

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.

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
- Exhibit A (2 Sheets)

5/27/2016 - wld

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT. Public Works

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE PERMITTING THE PALACE SHOPS SOUTH, LLC TO ENCROACH INTO THE RIGHT-OF-WAY AT 328 W. 20TH STREET WITH LIGHTS AND SIGNAGE.

- - -

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

Section 1:- That permission is hereby granted to The Palace Shops South, LLC ("Palace Shops") to encroach into the right-of-way at 328 W. 20th Street with lights and signage, as shown on Exhibit A attached hereto, such permission being further subject to the following conditions:

(1) That this permission is expressly subject to the right of revocation by the Council and that in the event of such revocation, Palace Shops, or its successors and assigns, shall immediately remove the encroaching structures.

(2) That upon the removal of the encroaching structures or any part thereof, the authority hereby granted shall cease and terminate.

(3) That Palace Shops, 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 the encroachment general liability insurance with a company authorized to do business in the Commonwealth of Virginia, insuring and naming the City of Norfolk ("City") as an additional insured in the amount of 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 and/or Palace Shops, 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, with evidence of such insurance being provided to the City.

(4) 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 in the right-of-way at 328 W. 20th Street, the location being shown on Exhibit A.

Section 2:- That the failure of Palace Shops, 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 the Palace Shops, 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.

PROPERTY OF

Cardinal
SIGN CORPORATION

2629 Dean Drive
Virginia Beach, Va. 23452

Phone:
(757) 486-3412

Fax:
(757) 486-7658

E-Mail:
SSTOLLINGS@
CARDINALSIGN.COM

Client:
Jessy's
Taco Bistro

Sign Location:
328 W 20th St
Norfolk VA

Design No.:
26109-BR3

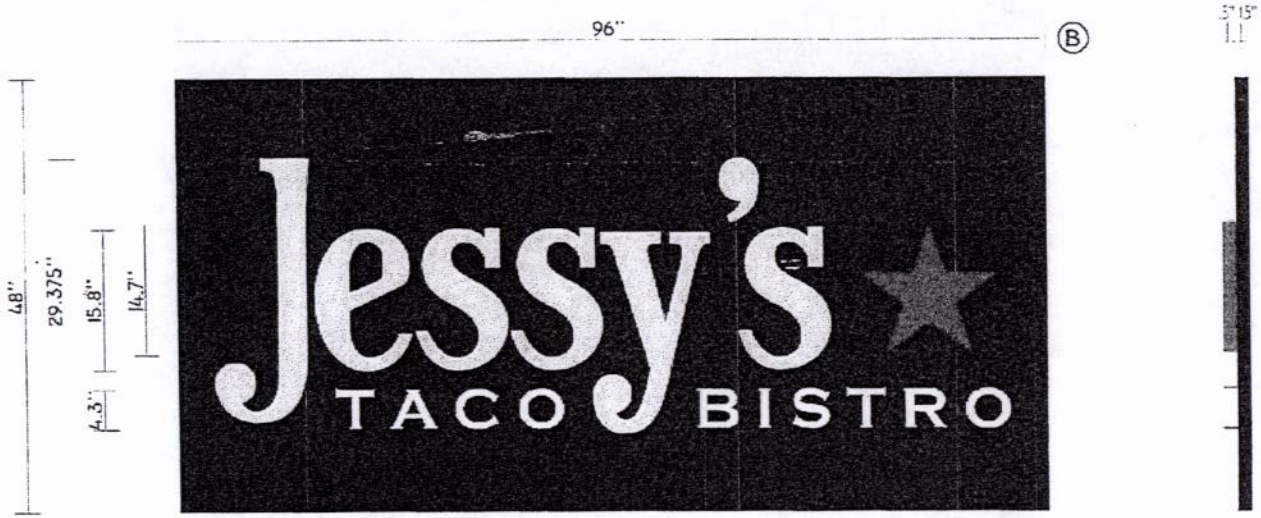
Designer:
kd

Salesman:
Stan Stollings

Scale:
3/4"=1'-0"

Date:
2-10-16

Customer Approval:
Signature
Date



SIGN B: 1/2" PVC CUT OUT LETTERS & STAR MOUNTED ON 48" X 96" X 1/2" PVC SHEET

- ALL PIECES PAINTED PER COLORS SHOWN IN DRAWING ABOVE

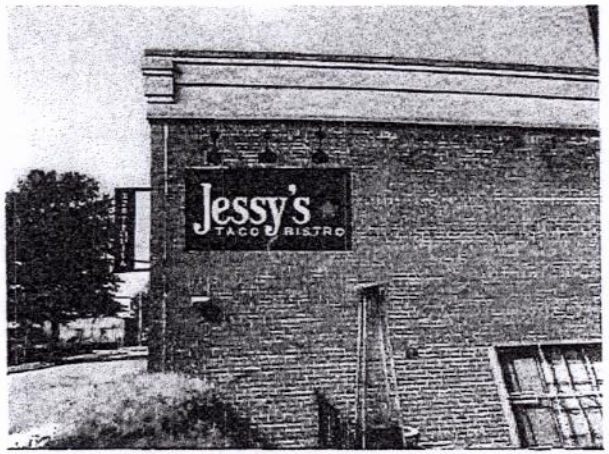


EXHIBIT A TO ORDINANCE

PROPERTY OF

Cardinal
SIGN CORPORATION

2629 Dean Drive
Virginia Beach, Va. 23452

Phone:
(757) 486-3412

Fax:
(757) 486-7658

E-Mail:
SSTOLLINGS@
CARDINALSIGN.COM

Client:
Jessy's
Taco Bistro

Sign Location:
328 W 20th St
Norfolk VA

Design No.:
26109-CR1

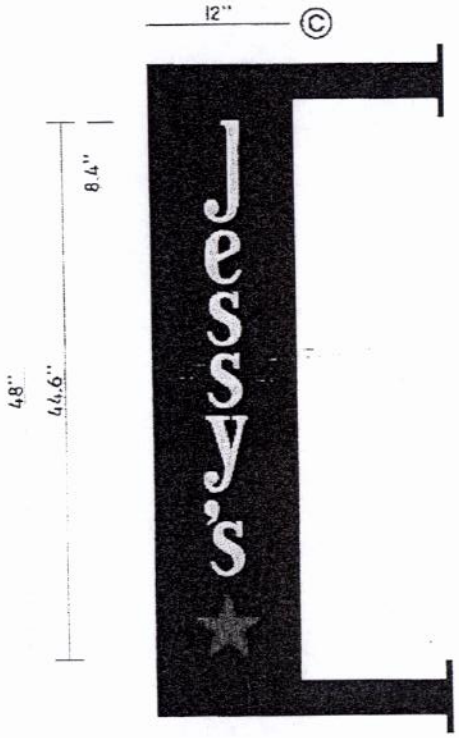
Designer:
kd

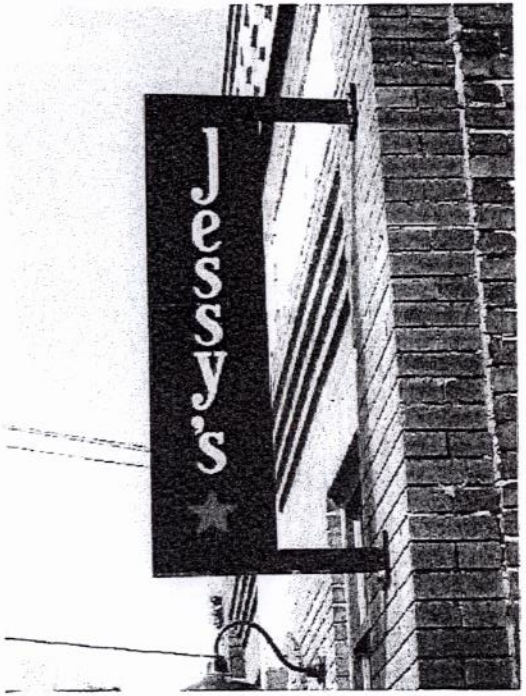
Salesman:
Stan Stollings

Scale:
1"=1'-0"

Date:
12-3-15

Customer Approval:
Signature
Date





SIGN C: D/F FLAG MOUNTED METAL SIGN

2

C: Dir., Department of General Services

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

June 28, 2016

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

Subject: Right of Entry Agreement with New Hope Church of God in Christ

Reviewed: Sabrina Joy-Hogg, Deputy City Manager

Ward/Superward: 2/7

Approved: Marcus D. Jones, City Manager

Item Number: **R-5**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** New Hope Church of God in Christ
616, 618, and 620 W. 35th Street
Norfolk, VA

III. **Description:**
This agenda item is an ordinance to approve a right of entry agreement between the City of Norfolk (the "city") and New Hope Church of God in Christ ("New Hope") to permit New Hope's use of city-owned property located at 616, 618, and 620 W. 35th Street (the "properties").

IV. **Analysis**
This agreement will permit New Hope to enter upon and use the properties for their annual vacation bible school event from July 11 - July 15, 2016. This event is open to the public and the city will have access to the properties at all times. Food will be provided to attendees and field trips are available to program participants. The city will also have access to the property at all times.

V. **Financial Impact**

Liability insurance for New Hope Church of God in Christ	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.

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 ordinance has 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
- Right of Entry Agreement

5/11/2016-wld

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT. General Services

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING A RIGHT OF ENTRY PERMITTING THE NEW HOPE CHURCH OF GOD IN CHRIST TO GO UPON AND USE THAT CERTAIN CITY OWNED PROPERTY NUMBERED AND DESIGNATED AS 616, 618, AND 620 W. 35TH STREET.

- - -

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

Section 1:- That the Right of Entry between the City of Norfolk ("City") and New Hope Church of God in Christ ("New Hope") that permits New Hope to go upon and use for certain purposes that certain property owned by the City and numbered and designated as 616, 618, and 620 W. 35th Street, a copy of which Right of Entry is attached hereto and incorporated herein as Exhibit A, is hereby approved.

Section 2:- That the City Manager and other proper officers of the City are authorized to execute the Right of Entry on behalf of the City and to do all things necessary and proper in furtherance thereof.

Section 3:- That the City Manager is further authorized to correct, amend or revise the Right of Entry as he may deem appropriate, consistent with the Council's intent as expressed herein.

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

EXHIBIT A TO ORDINANCE

THIS RIGHT OF ENTRY AGREEMENT ("Agreement"), made this ____ day of _____, 2016, by and between the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia ("City"), Grantor, and **NEW HOPE CHURCH OF GOD IN CHRIST** ("New Hope"), Grantee.

WITNESSETH:

The City does hereby grant to New Hope permission to enter upon and use certain City-owned parcels of property numbered and designated as 616, 618, and 620 W. 35th Street ("Property") from July 11th through July 15th, 2016 for the purpose of preparing for and hosting New Hope's "Vacation Bible School Program" ("Event"), which Event includes the placement of a tent on the Property for such purpose.

This Agreement shall be subject to the following terms and conditions:

1. The Event term and schedule authorized by this Agreement shall be as follows:

July 11, 2016 July 12, 2016 July 13, 2016 July 14, 2016 July 15, 2016	7:00AM – 8:30AM	Set up and preparation
July 11, 2016 July 12, 2016 July 13, 2016 July 14, 2016 July 15, 2016	8:30AM – 9:00PM	Event
July 11, 2016 July 12, 2016 July 13, 2016 July 14, 2016 July 15, 2016	9:00PM – 10:00PM	Clean up

2. The Right of Entry for the Event is subject to the City's right of revocation, at any time, and in its sole discretion.

3. The City shall have access to the Property at all times.

4. Prior to entering upon the Property, New Hope shall obtain all necessary permits and authorizations required for their intended use of the Property.

5. New Hope expressly agrees to indemnify, defend, and hold the City harmless from and against any and all claims, loss, damage, injury, and liability however caused, resulting from, arising out of, or in any way connected with New Hope's use of the Property.

6. New Hope, at its own cost and expense, shall take out and keep in full force and effect, liability insurance with a company authorized to do business in the Commonwealth of Virginia, insuring itself and naming the City as an additional party insured in the amount of at least $1,000,000.00 against liability for the death or injury to any person or persons, and in the amount of $100,000.00 for destruction of property from any and all claims, actions, and suits that may be asserted or brought against New Hope, or its successors, assigns, or against the City.

7. Upon the expiration of this Right of Entry, New Hope shall restore the property to its original condition, as it existed prior to entry, and shall repair any damage that results from New Hope's use of the Property.

8. This Agreement and the Right of Entry may not be assigned by New Hope Church to another entity.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officials as of the day and year first above written.

(SIGNATURE PAGES FOLLOW)

NEW HOPE CHURCH OF GOD IN CHRIST

_____

By: _____

Title: _____

COMMONWEALTH OF VIRGINIA,
CITY OF _____, to wit:

I, _____, a Notary Public of the City of_____, Commonwealth of Virginia, do hereby certify that_____, _____ (Title) of New Hope Church of God in Christ, whose name is signed in the foregoing Right of Entry 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.:_____

CITY OF NORFOLK

By:_____(SEAL)
City Manager

ATTEST:

_____
City Clerk

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

I, _____, a Notary Public of the City of Norfolk, Commonwealth 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 name is signed in the foregoing Right of Entry 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.:_____

APPROVED AS TO CONTENT:

_____
Director of General Services

APPROVED AS TO FORM AND CORRECTNESS:

_____
Assistant City Attorney

C: Dir., Norfolk Commonwealth's Attorney's Office

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

June 28, 2016

From: Gregory D. Underwood
Norfolk Commonwealth's Attorney

Subject: Victim/Witness Assistance Program Grant – Additional Grant Funding

Reviewed: _____
Morgan A. Whayland
Assistant to the City Manager

Ward/Superward: Citywide

Approved: _____
Marcus D. Jones, City Manager

Item Number: **R-6**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Norfolk Commonwealth's Attorney's Office

III. **Description:**
This agenda item is an ordinance to accept an additional $52,074 in grant funding from the Virginia Department of Criminal Justice Services (the "VDCJS") for the continuation of the FY 2016 Victim/Witness Assistance Program (the "Program"). The additional grant funds bring the total amount awarded in FY 2016 to $399,236. The additional funding authorizes the hiring of one (1) additional person for the Program in a special project employment status.

IV. **Analysis**
The Program grant provides continuation of funding for eight (8) persons, plus one (1) additional Protective Order Victim Advocate, who will assist crime victims inside and outside of the courtroom by encouraging their cooperation and participation in the Program, as well as increasing their understanding of the criminal justice system and their rights as explained in the Victims' Bill of Rights.

V. **Financial Impact**
There is no local matching or percentage funding requirement for this Grant.

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 of Norfolk's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter has been coordinated with the Commonwealth Attorney's Office and the City Attorney's Office.

Supporting Material from the Commonwealth Attorney's Office

- Ordinance

5/9/16 - bjt

Form and Correctness Approved RAW

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT. Commonwealth Attorney's Office

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. AMS

$ 399,236.00 2275-120-8109-8996
Account

Director of Finance 6/10/16
Date

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE ACCEPTING $52,074.00 IN ADDITIONAL GRANT FUNDING FROM THE VIRGINIA DEPARTMENT OF CRIMINAL JUSTICE SERVICES FOR THE CONTINUATION OF THE FY16 VICTIM/WITNESS ASSISTANCE PROGRAM, APPROPRIATING AND AUTHORIZING THE EXPENDITURE OF THE ADDITIONAL GRANT FUNDS FOR THE PROGRAM AND AUTHORIZING THE HIRING OF ONE (1) ADDITIONAL PERSON FOR THE PROGRAM IN A SPECIAL PROJECT EMPLOYMENT STATUS.

- - -

WHEREAS, by Ordinance No. 46,076 adopted on September 15, 2015 (copy attached), City Council accepted, appropriated and authorized $347,162.00 in grant funding from the Virginia Department of Criminal Justice Services for the Victim/Witness Assistance Program and authorized the hiring of eight (8) persons for the Program; and

WHEREAS, the City has been notified of additional grant funding in the amount of $52,074.00; now, therefore,

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

Section 1:- That $52,074.00 in additional grant funding from the Virginia Department of Criminal Justice Services for the continuation of the FY16 Victim/Witness Assistance Program is hereby accepted.

Section 2:- That the $52,074.00 in grant funds are

hereby appropriated and authorized to be expended for the FY16 Victim/Witness Assistance Program, according to the terms and conditions of the Victim/Witness Assistance Program, if and when the funds are made available from the Virginia Department of Criminal Justice Services.

Section 3:- That the City Manager is hereby authorized to employ an additional one (1) person in the Victim/Witness Assistance program, in a Special Project employment status, which person shall be entitled to participate in health insurance programs and other benefits, as eligible, made available to permanent, full-time City employees. Such special project employee serves at the will of the City Manager with regard to continued employment and serves with no right to grieve any employment action. The City Manager's administrative assignment of such employee to the operational supervision and control of a Constitutional Officer or other non-City agency shall not affect employment status, which shall continue to be governed by City Code Section 2.1-10 et seq. The Commonwealth's Attorney shall notify the City's Director of Human Resources immediately upon taking such action to terminate the placement of such special project employee in his office, so that the City Manager may review City employment status and timely make his decision regarding continued employment.

Section 4:- That this ordinance shall be in effect from and after its adoption.

COMMONWEALTH of VIRGINIA

Department of Criminal Justice Services

Francine C. Ecker
Director

1100 Bank Street
Richmond, Virginia 23219
(804) 786-4000
TDD (804) 386-8732

February 4, 2016

REVISED

Mr. Marcus D. Jones
City Manager
City of Norfolk
810 Union Street, Ste 1101
Norfolk, VA 23510

RE: Grant No.: 16-V8576VG15
Revised Victim Witness Program Award

Dear Mr. Jones:

The original grant award information, dated July 13, 2015, has been revised to reflect an increase in the total amount of awarded funds for Fiscal Year 2016. The additional amount has been added to the Supplies/Other Budget Category. Please submit a revised budget as outlined in the email dated January 20, 2016 from John Mahoney.

Enclosed you will find a "***revised***" Statement of Grant Award and a Statement of Grant Award Special Conditions. To indicate your acceptance of the award and conditions, please sign the award acceptance and return it to Janice Waddy, Grants Administrator, at the Department of Criminal Justice Services (DCJS). Please review the conditions carefully; as some require action on your part before we will disburse grant funds.

We apologize for any inconvenience and will be happy to assist you in any way we can to assure your project's success. If you have any questions regarding this matter, please contact Julia Fuller-Wilson at (804) 371-0386.

Sincerely,

Janice D. Waddy

Janice Waddy
Grants Administrator

Enclosures

cc: The Hon. Gregory D. Underwood, Commonwealth's Attorney
Mr. James Sutton, Finance Officer
Ms. Julia Fuller-Wilson, DCJS Monitor

REVISED 2-2-2016

Department of Criminal Justice Services

1100 Bank Street, 12th Floor, Richmond, VA 23219

Statement of Grant Award/Acceptance

Subgrantee: Norfolk City

Date: February 02, 2016

Grant Period:
From: 07/01/2015 **Through:** 06/30/2016

Grant Number: 16-V8576VG15

Project Director	Project Administrator	Finance Officer
The Hon. Gregory D. Underwood Commonwealth's Attorney City of Norfolk 800 E. City Hall Ave., Ste 600 Norfolk, VA 23510 **Phone:** (757) 664-4835 **Email:** gregory.underwood@norfolk.gov	Mr. Marcus D. Jones City Manager City of Norfolk 810 Union Street, Ste 1101 Norfolk, VA 23510 **Phone:** (757) 664-4242 **Email:** marcus.jones@norfolk.gov	Mr. James Sutton Finance Officer City of Norfolk 810 Union Street, Ste. 600 Norfolk, VA 23510 **Phone:** (757) 664-4482 **Email:** james.sutton@norfolk.gov

Grant Award Budget

Budget Categories	DCJS Funds Federal	General	Special	Local	TOTALS
Travel	$0	$6,072	$0	$0	$6,072
Supplies/Other	$52,074	$4,700	$0	$0	$56,774
Personnel	$0	$334,490	$0	$0	$334,490
Indirect Cost	$0	$0	$0	$0	$0
Equipment	$0	$1,900	$0	$0	$1,900
Consultant	$0	$0	$0	$0	$0
Totals	$52,074	$347,162	$0	$0	$399,236

This grant is subject to all rules, regulations, and criteria included in the grant guidelines and the special conditions attached thereto.

Francine C. Ecker, Director

The undersigned, having received the Statement of Grant Award/Acceptance and the Conditions attached thereto, does hereby accept this grant and agree to the conditions pertaining thereto, this day of 20

Signature:

Title: 3/1/16

STATEMENT OF GRANT AWARD SPECIAL CONDITIONS

Department of Criminal Justice Services
1100 Bank Street
Richmond, Virginia 23219

For the Victim Witness Assistance Grant Program – Localities		
Subgrantee: Norfolk City		Grant Number: 16-V8576VG15
	Federal Catalog Number: 16.575	
Title: Victim Witness Program		Date: February 4, 2016

The following conditions are attached to and made a part of this grant award:

1. By signing the Statement of Grant Award/Acceptance, the grant recipient agrees:

   - to use the grant funds to carry out the activities described in the grant application, as modified by the terms and conditions attached to this award or by subsequent amendments approved by DCJS;
   - to adhere to the approved budget contained in this award and amendments made to it in accord with these terms and conditions;
   - to comply with all terms, conditions and assurances either attached to this award or submitted with the grant application;
   - to comply with the "Victim/Witness Grant Program Fiscal Year 2015 and 2016 Program Guidelines and Application Procedures," dated March 25, 2014 and its Attachments. This includes compliance with Attachment 6--"Final Program Guidelines, Victims of Crime Act, FFY 1997, Victim Assistance Program," and includes a requirement that subgrantees maintain daily time and attendance records. (See Section B,8).

2. The subgrantee agrees to submit, on or before scheduled due dates, such reports as requested by DCJS on required forms. This includes filing required reports using the Client Information Management System (CIMS) and the online Grants Management Information System (GMIS).

3. The subgrantee agrees that it and all its contractors will comply with the following federal civil rights laws as applicable:

   - Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin in the delivery of services (42 U.S.C. § 2000d) and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart C;
   - The Omnibus Crime Control and Safe Streets Act of 1968, which prohibits discrimination on the basis of race, color, national origin, religion, or sex in the delivery of services and employment practices (42 U.S.C. § 3789d(c)(1)), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart D;
   - Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in the delivery of services and employment practices (29 U.S.C. § 794), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart G;
   - Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability in the delivery of services and employment practices (42 U.S.C. § 12132), and the DOJ implementing regulations at 28 C.F.R. Part 35;
   - Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities (20 U.S.C. § 1681), and the DOJ implementing regulations at 28 C.F.R. Part 54;
   - The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in the delivery of services (42 U.S.C. § 6102), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart I; and
   - The DOJ regulations on the Equal Treatment for Faith-Based Organizations, which prohibit discrimination on the basis of religion in the delivery of services and prohibit organizations from using DOJ funding for inherently religious activities (28 C.F.R. Part 38).
   - The Juvenile Justice and Delinquency Prevention Act of 1974, as amended, which prohibits discrimination in both employment and the delivery of services or benefits based on race, color, national origin, religion, and sex in JJDPA-funded programs or activities (42 U.S.C. § 5672(b)).
   - Section 1407 of the Victims of Crime Act (VOCA), as amended, which prohibits discrimination in both employment and the delivery of services or benefits on the basis of race, color, national origin, religion, sex, and disability in VOCA-funded programs or activities. (42 U.S.C. § 10604).

Statement of Grant Award Special Conditions (Continued)

Grant No: 16-V8576VG15

4. The Subgrantee agrees that none of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

5. The Subgrantee agrees that notwithstanding any other provisions of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat 1267; 5 U.S.C. App) and section 3145 of title 40, United States Code.

6. The Subgrantee will promptly refer to DOJs Office of the Inspector General any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has either (1) submitted a false claim for grant funds under the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving grant funds.

7. The Subgrantee cannot use any federal funds, either directly or indirectly, in support of any contact or subaward to either the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries, without the express prior written approval of OJP. In addition, the grantee will provide OVC with a draft copy of the letter of special condition for approval within 15 days.

8. The subgrantee agrees that in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights, Office of Justice Programs.

9. Grant funds, including state and local match, may be expended and/or obligated during the grant period. All legal obligations must be liquidated no later than 90 days after the end of the grant period. The grant recipient agrees to supply a final grant financial report and return all received and unexpended grant funds (exclusive of local match) to DCJS within 90 days after the end of the grant liquidation period.

10. By accepting this grant, the recipient assures that funds made available through it will not be used to replace state or local funds that would, in the absence of this grant, be made available for the same purposes.

11. Subgrantee may follow their own established travel rates if they have an established travel policy. If subgrantee does not have an established policy, then they must adhere to state travel policy. The state allows reimbursement for actual reasonable expenses. Please refer to the following IRS website for the most current mileage rate: **http://www.irs.gov/taxpros/article/0,,id=156624,00.html**: Transportation costs for air and rail must be at coach rates.

12. Within 60 days of the starting date of the grant, the subgrantee must initiate the project funded. If not, the subgrantee must report to the DCJS, by letter, the steps taken to initiate the project, the reasons for the delay, and the expected starting date. If the project is not operational within 90 days of the start date, the subgrantee must obtain approval in writing from the DCJS for a new implementation date or the DCJS may cancel and terminate the project and redistribute the funds.

13. **No amendment to the approved budget may be made without the prior approval of DCJS. No more than two (2) budget amendments will be permitted during the grant period. Budget amendments must be requested using the online Grants Management Information System, (GMIS), accompanied with a narrative. No budget amendments will be allowed after April 30, 2016.**

14. The subgrantee agrees to forward a copy to the DCJS of the scheduled audit of this grant award.

15. All purchases for goods and services must comply with the Virginia Public Procurement Act. Procurement transactions, whether negotiated or advertised and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. An exemption to this regulation requires the prior approval of the DCJS and is only given in unusual circumstances. Any request for exemption must be submitted in writing to the DCJS. Permission to make sole source procurements must be obtained from DCJS in advance.

Statement of Grant Award Special Conditions (Continued)

Grant No: 16-V8576VG15

16. Acceptance of this grant award by the local government applicant constitutes its agreement that it assumes full responsibility for the management of all aspects of the grant and the activities funded by the grant, including assuring proper fiscal management of and accounting for grant funds; assuring that personnel paid with grant funds are hired, supervised and evaluated in accord with the local government's established employment and personnel policies; and assuring that all terms, conditions and assurances—those submitted with the grant application, and those issued with this award—are complied with.

17. Any delegation of responsibility for carrying out grant-funded activities to an office or department not a part of the local government must be pursuant to a written memorandum of understanding by which the implementing office or department agrees to comply with all applicable grant terms, conditions and assurances. Any such delegation notwithstanding, the applicant acknowledges by its acceptance of the award its ultimate responsibility for compliance with all terms, conditions and assurances of the grant award.

18. PROJECT INCOME: Any funds generated as a direct result of DCJS grant funded projects are deemed project income. Project income must be reported on forms provided by DCJS. The following are examples of project income: Service fees; Client fees; Usage or Rental fees; sales of materials; income received from sale of seized and forfeited assets (cash, personal or real property included).

19. The recipient is required to certify and ensure that all aspects of personnel management and employment practices will be conducted in accordance with their local unit of government or state agency procedures, promoting equal employment opportunity. For example, the recipient must advertise for positions, interview candidates, hire, supervise, discipline, and separate program personnel in accordance with their local unit of government or state agency procedures promoting equal employment opportunity. Additionally, grantees must promptly notify DCJS whenever grant funded positions are vacated and must notify DCJS when such positions are filled.

20. All new Computer Processing Units (CPU's) purchased with grant funds must be protected by anti-virus software, which must be updated, as necessary. Before purchasing new computer equipment, the recipient is strongly encouraged to consult DCJS' IT Contact Specialists at (804) 786-4576 or (804) 225-4868.

21. In accordance with VOCA guidelines, grant funds may support membership in no more than three appropriate organizations.

22. No more than 5% of grant funded staff hours may be devoted to the provision services to witnesses.

23. Costs, including staff time, associated with the preparation of subpoenas cannot be supported with grant funds.

24. Email and internet access funded through the grant must be for official program use only.

25. **Any non-federal cash awarded in excess of 20% of the total grant award shall not be considered match. These non-federal funds are the only DCJS grant funds which may support appropriate service coordination or other appropriate activities advancing the delivery of direct services which may not be supported with federal funds.**

    Coordination activities may include serving on state or local task forces, commissions, working groups, coalitions, and/or multi-disciplinary teams. Coordination efforts also include developing written agreements that contribute to better and more comprehensive services to crime victims.

26. When there is any personnel change in the program, the recipient agrees to submit the DCJS Program Change/ Update form available on the DCJS website at: http://www.dcjs.virginia.gov/forms/sectionForms.cfm?code=9&program=victims.

27. Subgrantee agrees that DCJS, the Office for Victims of Crime (OVC) and/or the Office of the Chief Financial Officer (OCFC) and its representatives shall be granted access to and the right to examine all records, books, paper or documents related to the VOCA grant.

Statement of Grant Award Special Conditions (Continued)

Grant No: 16-V8576VG15

28. Unless otherwise stated, Special conditions listed in item 29 must be met by September 30, 2015. If they remain unmet after this date, then the subgrantee must report to DCJS, by letter, the steps taken to achieve compliance, the reasons for non-compliance, and the expected date of compliance. DCJS may terminate grant funding based upon unexplained or unreasonable failure to substantially comply with special conditions within reasonable specified timeframes.

29. Prior to DCJS disbursing funds, the Subgrantee must comply with the following special conditions:

    a) Submit an itemized budget and budget narrative as outlined in the January 20, 2016 e-mail from John Mahoney. Completed documents should be returned to: grantsmgmt@dcjs.virginia.gov.

NORFOLK

Office of the City Attorney

BERNARD A. PISHKO
City Attorney
WAYNE RINGER
MARY L. NEXSEN
NATHANIEL BEAMAN IV
MARTHA P. McGANN
CYNTHIA B. HALL
JACK E. CLOUD
HEATHER A. MULLEN
DEREK A. MUNGO
TAMELE YVETTE HOBSON
NADA N. KAWWASS
ADAM D. MELITA
MICHELLE G. FOY
MATTHEW P. MORKEN
HEATHER L. KELLEY
ERIKKA M. MASSIE
ZACHARY A. SIMMONS
KARLA J. SOLORIA
ALEX H. PINCUS

June 28, 2016

To the Honorable Council
City of Norfolk, Virginia

R-7

Re: Philpotts Road Designation for Walter H. Green, Sr.

Dear Ladies and Gentlemen:

The attached ordinance designates Philpotts Road as Walter H. Green, Sr. Road in honor and appreciation of Mr. Green's work to improve Philpotts Road.

Respectfully,

Bernard A. Pishko
City Attorney

BAP/wld

Attachment

810 Union Street, Suite 900 • Norfolk, VA 23510
(757) 664-4529 • Fax: (757) 664-4201

6/22/2016 - wld

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT. Office of the City Attorney

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE DESIGNATING PHILPOTTS ROAD AS WALTER H. GREEN, SR. ROAD.

- - -

WHEREAS, Walter H. Green, Sr. was the Chairman of the Philpotts Road Improvement Group, which was essential in helping to improve Philpotts Road from a country road with significant flooding problems into a wider, better maintained City street; and

WHEREAS, he helped to secure the needed signatures from local homeowners on the petitions to improve Philpotts Road; and

WHEREAS, he was an education pioneer in Norfolk, being the first African-American guidance counselor and varsity sports coach at Norview High School; and

WHEREAS, the City of Norfolk, with sincere appreciation, wishes to recognize his many contributions to the citizens of the City; now, therefore,

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

Section 1:- That the name of Philpotts Road is hereby designated as Walter H. Green, Sr. Road.

Section 2:- That this ordinance shall be in effect from and after the date of its adoption.