City of NORFOLK

C: Dir., Department of Development

To the Honorable Council
City of Norfolk, Virginia

May 10, 2016

From: Charles E. Rigney, Sr., Director of Development

Subject: An ordinance approving a land disposition and development contract with Ocean View Properties, Inc.

Reviewed: Peter Chapman, Deputy City Manager

Ward/Superward: 2/6

Approved: Marcus D. Jones, City Manager

Item Number: **PH-1**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Ocean View Properties, Inc.

III. **Description:**
This agenda item is an ordinance to approve a land disposition and development contract with Ocean View Properties, Inc. for two parcels of land consisting of a total of 3.7 acres, more or less, and located at 719 E. Ocean View Avenue.

IV. **Analysis**
- Parcels include the former Ramada Inn site and Senior Center in Ocean View.
- Apartment style development – 145 units that will provide quality, affordable housing in Ocean View and additional support for existing and future commercial development in the area.
- Project is consistent with plaNorfolk2030 objectives.

V. **Financial Impact**
The sale of this property would place it back on the tax rolls and provide quality, affordable housing in Ocean View. The sales price is $1.285 million.

VI. **Environmental**
N/A

VII. **Community Outreach/Notification**
Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

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

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter has been coordinated with the Department of Development, City Attorney's Office and the City Manager's office.

Supporting Material from the City Attorney's Office:

- Ordinance
- LDDC
- Exhibits

3/3/2016mr

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
Department of Development

NORFOLK, VIRGINIA

ORDINANCE No.

PH-1

AN ORDINANCE APPROVING A LAND DISPOSITION AND DEVELOPMENT CONTRACT WITH OCEAN VIEW PROPERTIES, INC. FOR TWO PARCELS OF LAND CONSISTING OF A TOTAL OF 3.7 ACRES, MORE OR LESS, AND LOCATED AT 719 E. OCEAN VIEW AVENUE.

- - -

WHEREAS, the City of Norfolk desires to see a project of specific size, high quality design, and quality materials constructed by private developers on those certain parcels of real property owned by the City and consisting of 3.7 acres, more or less, including all buildings, structures and improvements thereon, located at 719 E. Ocean View Avenue in the City of Norfolk (the "Property"); and

WHEREAS, negotiations between the City and Ocean View Properties, Inc. (the "Developer") resulted in that certain Land Disposition and Development Contract for the sale of certain property, which was approved by Council on March 18, 2014, but market and other outside factors have caused the parties to renegotiate the terms and conditions of that agreement; and

WHEREAS, the parties wish to amend and restate their agreement to provide for the Developer to construct, furnish and equip a multi-story, multi-building apartment project on the

Property consisting of 120-150 residential units, with related parking, recreation, and leasing/management office facilities; now, therefore

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

Section 1:- That the terms and provisions of the Land Disposition and Development Contract between the City of Norfolk, as seller, and Ocean View Properties, Inc. ("Developer"), as purchaser, a copy of which is attached hereto, under which the City of Norfolk agrees to sell to Developer those certain parcels of land consisting of 3.7 acres, more or less, and located at 719 E. Ocean View Avenue, and Developer agrees to construct on the property approximately 120-150 residential units, with related parking, recreation, and leasing/management office facilities, upon the terms and conditions set forth therein, are hereby approved.

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

Section 3:- That the City Manager is further authorized to correct, amend or revise the Land Disposition and Development Contract as he may deem necessary to carry out the intent of the Council subject to the approval for form and correctness by the City Attorney.

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

AMENDED AND RESTATED
LAND DISPOSITION AND DEVELOPMENT CONTRACT

BY AND BETWEEN

THE CITY OF NORFOLK, VIRGINIA

AND

OCEAN VIEW PROPERTIES, INC.

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AMENDED AND RESTATED
LAND DISPOSITION AND DEVELOPMENT CONTRACT

THIS AMENDED AND RESTATED LAND DISPOSITION AND DEVELOPMENT CONTRACT ("Contract"), is made as of the __ day of _____, 2016, by and between the CITY OF NORFOLK, VIRGINIA ("City"), a municipal corporation of the Commonwealth of Virginia, and OCEAN VIEW PROPERTIES INC, a Virginia corporation ("Developer"). The parties to this Contract may be referred to herein collectively as the "Parties" or individually as the "Party".

RECITALS:

A. Under the leadership of the City Council of the City of Norfolk, the City has embarked on a plan to maintain, retain, improve and expand residential developments in the City, to cooperate in projects that increase both temporary construction and permanent jobs in the City, and to provide catalysts for neighborhood stability, which enhances quality of life in the City.

B. The City desires to see a project of specific size, high quality design, and quality materials constructed by private developers on those certain parcels of real property owned by the City, including (i) a portion of the parcel known as the former Ocean View Senior Center property with an address of 600 E. Ocean View Avenue and (ii) the adjacent parcel consisting of approximately 2.403 acres with address of 719 E. Ocean View Avenue, including all buildings, structures and improvements thereon, which parcels include a total acreage of approximately 6.013 acres and are shown as "Parcel B" on the proposed resubdivision plat entitled "Resubdivision of Parcels A and A-1" attached hereto as Exhibit "A" (the "Property"). The Property shall not include the portion of the Senior Center property shown on Exhibit A as "Parcel C."

C. Negotiations by the Parties resulted in that certain Land Disposition and Development Contract for the sale of certain property, which was approved by Council on March

18, 2014, but market and other outside factors have caused the parties to renegotiate the terms and conditions of that agreement.

D. Accordingly, the parties wish to amend and restate their agreement to provide for the Developer to construct, furnish and equip a multi-story, multi-building apartment project on the Property consisting of 120-150 residential units, with related parking, recreation, and leasing/management office facilities (the "Project"). The Project is described in detail in Developer's Proposal, as hereinafter defined, a copy of which is attached hereto as Exhibit "B". In the event of a conflict between the terms of this Agreement and the terms of the Developer's Proposal, the terms of this Agreement shall govern.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants herein contained, the Deposit which has been received by City 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 Contract with an initial capital letter or letters, each of the following terms shall have the meaning set forth below.

(a) "Affiliate" of Developer means any legal entity, which controls, is controlled by, or is under common control with another entity with the Developer.

(b) "City" means the City of Norfolk.

(c) "Substantially Complete" or "Substantial Completion" means, with respect to the Project, the date when the construction of the building (s) is sufficiently completed so as to permit use of the building(s) for the purposes for which it was intended and a certificate of occupancy has

been issued for all the component uses, which date may precede the full completion of all punch-list items, landscaping and similar design and development functions.

(d) "Contractors" means the general contractors and subcontractors for construction of the Project.

(e) "Deposit" means the sum of Five Thousand and 00/100 Dollars ($5,000.00) to be paid by Developer to City at the time of execution of this Contract.

(f) "Developer's Proposal" means Developer's unsolicited proposal to the City regarding the Project, such proposal, as amended, having been accepted by the City.

(g) "Development Budget and Timeline" means a budget and timeline, prepared by Developer and approved by the City pursuant to Section 2.10 hereof, for development of the Project on such schedule as is reasonably required to achieve the Construction Completion Deadline, as hereinafter defined, set forth in Section 2.10 hereof.

(h) "Due Diligence Period" means the one hundred twenty (120) day period more fully described in Section 2.1.

(i) "Financing Commitment" means a commitment or commitments reasonably satisfactory to the City, which has or have been accepted by Developer from one or more equity investors or institutional lenders who are approved by the City, to finance the construction of the Project. In order to constitute a Financing Commitment under this definition, a commitment must be duly authorized by the issuer, and must be in substantially the same form and level of detail typically utilized by a prospective lender or investor in similar transactions, including requirements for Closing, as hereinafter defined, and conditions thereof; and, in the case of loan commitments, setting forth the proposed principal amount, interest rate, amortization terms, collateral or guaranty

requirements, maturity date, improvements to be constructed, and the expiration date of the commitment.

(j) "Outside Closing Date" means thirty (30) days after Developer has received all permits and approvals required to start construction but in no event later than March 31, 2017.

(k) "Purchase Price" means the sum of One Million Two Hundred Eighty-Five Thousand and 00/100 Dollars ($1,285,000.00).

(l) "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 the Contractors.

ARTICLE II
AGREEMENT TO CONVEY AND DEVELOP PROPERTY

Section 2.1. "As Is", Development, Design and Construction of Project.

The City will convey Property to Developer by special warranty deed which 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 purposes contemplated by this Contract. Subject to Section 8.3, the Developer shall be granted an easement for ingress and egress over the front portion of the parcel identified as Parcel C in Exhibit A (the "Access Easement"). Within sixty (60) days after the date of this Contract, Developer, at its expense, shall obtain a commitment for title insurance on the Property. Developer shall provide a copy of such title report/commitment to the City along with any objections thereto within fifteen (15) business days after Developer's receipt of such report/commitment. The City shall have a reasonable time to cure any title defects which are not acceptable to Developer and/or its lender. Prior to closing, Developer shall update the title report on the Property to be certain the only exceptions to the title at Closing are the Permitted Encumbrances. The foregoing notwithstanding, the City shall have the option of

declining to cure any defect by providing written notice thereof to Developer within sixty (60) days after receipt of written notice of such defect and a copy of Developer's title commitment, and, if the City does decline to cure any defect or does not cure any defect that it has agreed to cure, the Developer shall have the right to terminate this Contract at any time prior to the expiration of the Due Diligence Period and to receive the return of the Deposit as its exclusive remedy for termination of this Contract and any related claim. Developer will accept the Property from the City, subject to the terms and conditions hereinafter set forth. Except as expressly set forth in this Contract, Developer is accepting the use and conveyance of the Property "as is." Developer shall have one hundred twenty (120) days after the date of execution of this Contract to obtain the necessary information, assessments, studies, and the like which are necessary to determine if Developer wants to proceed with construction of the Project and to exercise its rights of entry under Section 4.1 hereof (the "Due Diligence Period"). In the event Developer determines the Property is unsuitable for constructing the Project, its sole remedy shall be return of its Deposit and termination of this Contract, which termination may be effected by giving written notice thereof to the City in accordance with the terms hereof prior to the end of the Due Diligence Period. Each Party shall be responsible for its costs of closing. Title to the Property will not be conveyed before the Developer closes on the financing for the construction of the Project and the terms and the source of the financing are acceptable to the City. Developer shall be responsible for any demolition.

Section 2.2. Restrictive Covenants.

The restrictive covenants contained in this Section 2.2 ("Restrictive Covenants") are intended and designed to operate as covenants binding upon Developer and its Affiliates and their successors and assigns. The Restrictive Covenants are intended for the benefit of the Property

provided that only the City and any successor or assignee of the City that is a local governmental agency and the United States of America, with respect to Subsection 2.2(d), shall have the right, power and authority to enforce the Restrictive Covenants; and provided, further, that the City shall have the right, power and authority (without the necessity of obtaining the consent of Developer) to waive compliance by Developer 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 of the City with regard to development. 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 foregoing covenants, and the exercise of any right or remedy for breach of any of such covenants, shall not destroy, impair or otherwise affect the lien of any recorded instrument given by Developer to secure repayment of a loan or loans made for the purpose of providing funds for improving the Property. The Parties recognize that the development and operation of the Property in a manner which is in the best interest 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, which may not now be foreseen or anticipated by the Parties. The Parties, therefore, reserve unto themselves the right to enter into such interpretive, implementing, amendatory or confirmatory agreements from time to time as they may deem necessary or desirable for any such purpose without obtaining the consent or approval of any person not a party to this Contract, except as may be expressly otherwise provided in this Contract.

The City has determined, in the exercise of its legislatively delegated discretion, that in order to carry out the objective of maintaining, retaining, improving and expanding existing development, and to set a prevailing high standard in aesthetics, public policy is best served by the imposition of conditions and restrictions upon the improvement, use, and maintenance of vacant land which is intended for development by private enterprise. To that end, it is hereby specified that, as part of the consideration for this transaction, the use of the Property to be conveyed is expressly subject to the following covenants, restrictions, limitations and conditions, which are to be imposed as covenants running with and binding upon the aforesaid Property and Project:

(a) The Property and Project shall not be used for industrial purposes, with the exception of parking, but shall initially be used for and, for at least a period of forty (40) years from the date of Closing, shall continue to be used for residential, retail or mixed use commercial purposes.

(b) There shall not be effected or executed any agreement, lease, covenant, conveyance or other instrument whereby the sale, lease or occupancy of the Property or Project is restricted upon the basis of race, creed, color, religion, sex, national origin, disability or familial status.

(c) Developer will comply with all state and local laws, in effect from time to time, prohibiting discrimination or segregation by reason of race, creed, color, religion, sex, national origin, disability or familial status in the leasing or occupancy of the Property, or any improvements thereon, including the Project.

(d) Developer agrees, on its own behalf and on behalf of its successors and assigns, not to discriminate upon the basis of race, creed, color, religion, sex, national origin, disability or familial status in the sale, lease, rental, use or occupancy of the Property or any

improvements thereon, including the Project. This covenant being given for the benefit of the public, the United States of America is expressly recognized as a beneficiary thereof and is entitled to enforce it for its own benefit or that of the public.

(e) Coal shall not be used for heating or developing fuel or for any other operation on the Property.

(f) Any land area within the Property not occupied by structures, hard surfacing, or vehicular driveways shall be kept planted with grass, trees and plants and/or shrubbery and shall be maintained in a healthy condition and neat appearance. In the event of a default by Developer, its successors and/or assigns, in the planting and/or maintenance obligations set forth in this Section 2.2(f), which default continues for a period of ten (10) business days after receipt by Developer of written notice thereof by Developer, the required planting and maintenance work may be completed by the City at the sole cost and expense of Developer, its successors and assigns, from time to time and in keeping with this covenant, and Developer shall reimburse City for the costs thereof within thirty (30) days after receipt of an invoice therefor.

(g) Developer agrees, on its own behalf and on behalf of its successors and assigns, that the Project and its appurtenant premises will be maintained in a first class and sound condition and with a neat and well maintained appearance. Necessary repairs, maintenance and upkeep of the Project will be performed so as to preserve the attractive appearance, physical integrity, and the sanitary and safe condition of the buildings and other improvements. In the event of a default by Developer, its successors and/or assigns, in the repair, maintenance and/or upkeep obligations set forth in this Section 2.2(g), which default continues for a period of thirty (30) days after receipt of written notice thereof by Developer, the required repairs, maintenance and/or upkeep may be completed by the City at the sole cost and

expense of Developer, its successors and assigns, from time to time and in keeping with this covenant, and Developer shall reimburse City for the costs thereof within thirty (30) days after receipt of an invoice therefor.

(h) All exterior walls shall be constructed of permanent materials impervious to deterioration in appearance, such as stone, exposed aggregates, brick, block, pre-cast panels, glass, hardiplank, or EFIS (exterior finishing insulation systems). All roof structures and appurtenances in excess of six (6) inches in diameter and twelve (12) inches in height shall be shielded or screened from observation from the same elevation. Such shielding or screening shall be with materials compatible and in harmony with the roof and/or side walls.

(i) Any service area, facility or equipment located on that side of the Project site which is adjacent to a public right-of-way is to be enclosed or adequately screened. The materials used for the enclosures and screens shall be consistent with the design of the Project.

(j) No landscaping, improvements or structures, whether temporary or permanent in nature, shall be constructed, commenced or erected on the Property unless and until the plans, working drawings, specifications and materials therefor have been approved in writing by the City.

(k) Gas, electric and other utility services shall be underground to the Project from the main distribution. No utility line or connection to any utility line at or above ground level shall be permitted.

(l) The covenants under Subsections (a), (e), (f), (g), (h), (i), (j) and (k) shall expire forty (40) years after the date of this Contract.

It is intended and agreed hereby that the Restrictive Covenants under this Section 2.2 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 Developer, and its successors and assigns, as the case may be.

Section 2.3. Title Insurance.

At Closing, Developer shall obtain, at its expense, an ALTA Owner's Policy of Title Insurance in the amount of the Purchase Price or such other amount as required by its lender.

Section 2.4. Design of Project.

In accordance with Section 2.7 below, the design and materials of the Project shall be subject to review and approval by the City's Design Review Committee and the City's Planning Commission. The Project will consist of the buildings, facilities and elements described in Developer's Proposal. The design of the apartments to be constructed on the Property and the construction materials used within will be of at least the same or similar quality of other first class residential projects approved by the City on property formerly owned by the City.

Developer shall submit the preliminary plans to the Planning Director (a) when design is approximately 10% complete, (b) when the design is 30% complete, (c) when the design is 90% complete, and (d) when the design is sufficiently complete such that Developer's contractor can proceed with construction (the "Final Plans"). Developer may not proceed with construction until the Final Plans for the Project are approved by the Planning Commission and, in order to enforce this Section 2.4, the City shall be entitled to seek injunctive relief without the necessity of showing monetary or special damages and without posting bond or security for a bond for the award of a permanent injunction. The City's review will include confirmation that the design at the 90% stage and the Final Plans are in substantial conformance with the previous plans provided or properly modified in accordance with this Contract. Notwithstanding the foregoing, upon prior written notice to the City setting forth in detail the changes to be made and the reasons therefor,

Developer shall have the right to make changes in the design and construction of the Project to the extent required to meet applicable codes, rules, regulations, statutes and ordinances. Developer must also obtain all other approvals required by the Norfolk City Code and other applicable laws and regulations. If, prior to Closing, Developer, despite using commercially reasonable efforts, is unable to obtain approval by the City of the plans for the Project and all other governmental approvals and permits required to commence construction of the Project, Developer may terminate this Contract by giving the City written notice thereof prior to the Closing, in which event the City shall refund the Deposit to the Developer.

Section 2.5 Construction and Design of Parking.

Developer shall be responsible for the design, construction, and equipping of the parking areas on the Project in accordance with Developer's Proposal and applicable zoning requirements.

Section 2.6. Relocation and Construction of Utilities.

Developer shall be responsible for the relocation of any utilities which is necessitated by the construction of the Project on the Property and for bringing and connecting utilities to the Project, and all costs thereof shall be paid and borne by Developer. In addition, Developer shall cause all electric, telephone and other utility lines for the Project to be placed underground within public rights of way or utility easements located within the Property lines. City agrees that all utilities are currently at or will be brought to the boundary line of the Property by the City.

Section 2.7. City's Review Procedures.

The City shall review the design submissions within thirty (30) days of its receipt of the same, and shall give written notice to Developer within such thirty (30) day period of its

determination that either (a) the same are approved as complete in accordance with the terms of this Contract, (b) that such submissions are incomplete or otherwise fail to comply with the terms of this Contract, and/or (c) that such submissions must be modified. If the City determines that the Project design documents submitted to it hereunder are incomplete or otherwise fail to comply with this Contract or must be modified in accordance herewith, it shall disapprove them or request such modification and shall, in its notice thereof to Developer, set forth with specificity the reasons for the failure to comply and/or the nature of the modification being requested. After correcting and/or modifying and completing the Project design documents in accordance herewith, Developer shall resubmit the Project design documents to the City within thirty (30) days after such notification from the City. The City shall, within thirty (30) days of the receipt of such revised Project design documents, give notice to Developer whether it approves or disapproves or requires further modification of the Project design documents and, if it disapproves or requests further modifications, it shall set forth the specific reasons for such disapproval or requested modifications in its notice thereof to Developer. Each further revision and resubmission of any of the Project design documents by Developer, and each further review and notice of approval or disapproval or request for modification of any of the Project design documents by the City shall be done or made pursuant to the procedures hereinabove set forth.

Section 2.8. Modifications of Design by Developer.

If Developer wishes to make modifications to the design of the Project, it shall submit such proposed modifications to the City for review and approval. Any such submission shall clearly identify all changes, omissions and additions as compared to the previously approved Project design documents. If the City determines, in its reasonable judgment, that the proposed modifications are acceptable, the City shall so notify Developer, the Project design shall be deemed

to incorporate the modifications that have been approved by the City, and Developer shall perform its obligations under this Contract in accordance with the Project design, as modified. If the City determines, in its reasonable judgment, that the proposed modifications are not acceptable, the City shall so notify Developer, specifying in reasonable detail in what respects such proposed modifications are not acceptable, and Developer shall either (a) withdraw the proposed modifications, in which case construction of the Project shall proceed on the basis of the Project design previously approved by the City, or (b) revise the proposed modifications in response to the City's objections and resubmit such modifications to the City, within thirty (30) days after receipt of such notice of objections, for review and approval.

Section 2.9 Rezoning.

If not previously applied for, within sixty (60) days after the full execution of this Contract by all parties hereto, the Developer shall apply for the rezoning of the Property to a zoning classification that permits the use of the Property as contemplated in the Developer's Proposal. City staff shall assist Developer during the application process.

Section 2.10 Construction Schedule.

Developer shall commence construction of the Project on or before that date which is sixty (60) days after the later of (a) the date of Closing or (b) the date of approval of the Final Plans by the City (the "Construction Commencement Deadline"). Developer shall provide written notice to the City of the date of the commencement of construction within five (5) business days after such commencement. Construction of the Project shall be Substantially Completed in a good and workmanlike manner in accordance with the Final Plans and a Certificate of Occupancy shall have been obtained by Developer no later than that date which is three hundred and sixty-five

(365) days after the date of commencement of construction, subject only to extensions for Permitted Delays, as hereinafter defined (the "Construction Completion Deadline").

Full completion of all punch-list items, landscaping and similar design and development functions for the Project ("Final Completion") by Developer shall occur within two (2) months following Substantial Completion, subject to Unavoidable Delays. Construction shall be completed by Developer on such schedule as is reasonably required to achieve Substantial Completion prior to the Construction Completion Deadline. Accordingly, at or prior to submission of the plans for final approval by the City, a Development Budget and Timeline shall be furnished by Developer to the City's Director of Development for review and approval by the City.

Promptly after the execution and delivery of this Contract, Developer shall commence and diligently prosecute all investigations, studies, applications, architectural and engineering work, negotiations, letting and execution, as the case may be, of construction, demolition, and utility relocations or abandonment, contracts or commitments, necessary or appropriate for the commencement of construction in accordance with the terms hereof.

Section 2.11. Financing Commitment.

Prior to Closing, Developer shall provide a Financing Commitment to the City, in form and substance satisfactory to the City, evidencing Developer's financial ability to design, construct and equip the Project and thereafter to maintain, operate and lease the same.

Section 2.12. Failure to Obtain Financing or to Meet Construction Schedule.

In the event that (a) Developer fails to commence construction of any phase of the Project as specified in Section 2.10, or (b) construction ceases for ninety (90) consecutive days (other than, in either case, because of Permitted Delay), except if such cessation is due to the phased development time periods contemplated in Section 2.10, and if the Developer makes

reasonable effort to recommence construction, then such ninety (90) day period will be extended to one hundred twenty (120) days, the City, shall be entitled, but not obligated, to terminate this Contract upon thirty (30) days written notice to Developer and upon the conclusion of such thirty (30) day period and no cure by Developer, this Contract shall terminate except for the City's remedies as outlined below. In the event a delay in construction of the Project is caused by an Unavoidable Delay, the applicable Construction Commencement Deadline and/or the Construction Completion Deadline shall be extended but only by the number of days of delay caused by such Unavoidable Delay; provided, however, there shall be no extension of the applicable Construction Commencement Deadline and/or the Construction Completion Deadline unless, (x) within five (5) business days after the occurrence of any such Unavoidable Delay, Developer provides written notice to the City of the occurrence of such Unavoidable Delay, (y) within five (5) business days after conclusion of such Unavoidable Delay, Developer provides an additional written notice to the City of the total number of days of such Unavoidable Delay and of the adjusted applicable Construction Commencement Deadline and/or Construction Completion Deadline, and (z) the City agrees to the date(s) of such adjusted Construction Commencement Deadline and/or the Construction Completion Deadline in writing. Any Unavoidable Delay properly documented in accordance with the terms of this Section 2.12 shall be referred to herein as a "Permitted Delay."

In the event this Contract is terminated by the City pursuant to this Section 2.12, the City shall have the right, but not the obligation, to re-enter and take title to the Property, in which event Developer shall immediately execute a deed re-conveying the Property as well as all improvements thereon to the City, subject to any mortgage ("Mortgage") secured by the Project and to which the Property is subject pursuant to the Financing Commitment and further subject to

any tenant leases already in place for premises at the Project; provided the City shall pay for the Property in accordance with Section 9.2 of this Contract. In the event the City has the right to terminate this Contract as provided in this Section 2.12, but does not exercise its right to terminate and the then current phase of the Project is Substantially Completed on a date after the applicable Construction Completion Deadline, then Developer shall pay liquidated damages to the City for such delay for each day between the applicable Construction Completion Deadline and the date the then current phase of the Project is Substantially Completed. The amount of liquidated damages for each day of such delay shall be the difference between real estate taxes that would be payable if the then current phase of the Project had been Substantially Completed on the applicable Construction Completion Deadline and the actual real estate taxes that are assessed for the days between the applicable Construction Completion Deadline and the date the then current phase of the Project is Substantially Completed. Developer agrees this provision is a valid and enforceable liquidated damages provision and the City's Real Estate Assessor's assessment of the amount owed by Developer as liquidated damages shall be accepted by Developer as the proper amount.

Section 2.13. Risk of Loss and Insurance.

After Closing, the Developer shall bear the risk of loss on the Property and all improvements thereon, including the Project. Developer agrees that in the event the Project is partially or fully damaged or destroyed prior to Final Completion of the entire Project and occupancy, Developer shall rebuild the Project at its costs, including the costs of design, construction and equipping same. Failure to commence reconstruction within a reasonable time or failure to complete reconstruction shall entitle City to have the Property reconveyed to City on the terms described in Section 9.2 with respect to a default under Section 2.12(a).

Beginning on the Date of Closing, Developer shall, at its sole expense and cost, keep the Property and all of the improvements, including the Project, on the Property insured, on forms and in companies acceptable to City, for the benefit of Developer and City, in an amount equal to not less than the full insurable value (a) against loss and damage by fire, and (b) against loss or damage from risks covered by standard form of endorsement for use in Norfolk, Virginia. In no event shall the coverage amount be less than the amount it would take to design, construct and equip the Project in the event of partial or complete destruction of the Project. Developer shall maintain such other insurance, including, without limitation, pollution legal liability insurance, as shall be reasonably requested by the City. City shall be named as an additional insured on all policies of insurance until the final certificate of occupancy is issued for the Project.

Prior to Closing, City shall bear the risk of loss of the Property and any existing improvements. However, any improvements thereon are to be demolished by Developer after Closing; therefore loss of all or part of improvements on the Property prior to Closing in no way requires City to rebuild the existing improvements and shall not affect Developer's obligation to close or affect the Purchase Price.

Section 2.14. Sidewalks. The existing sidewalks adjacent to the Property require upgrade and/or construction. Such upgrade and construction shall be the responsibility of Developer at Developer's expense in accordance with the specifications set forth in Exhibit C or, in the absence of such specification in Exhibit C, in accordance with the City's standard specifications for sidewalks.

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 mutually satisfactory to Developer and the City but in no event later than Outside Closing Date. Time is of the essence.

Section 3.2. Consideration.

In consideration for the City's conveyance of the Property to Developer, Developer shall pay to the City the Purchase Price and Developer shall be obligated to design, construct, and equip the Project on the Property at Developer's sole cost and expense pursuant to the terms of this Contract.

Section 3.3. Conditions of Developer's Obligation to Close.

The obligation of Developer to close hereunder is expressly conditioned upon the fulfillment by and as of the date of Closing of each of the conditions listed below; provided, however, that Developer, at its election, evidenced by written notice delivered to the City prior to or at the Closing, may waive any or all of the following conditions:

(a) Developer shall have the Due Diligence Period to have an environmental assessment, identification of utilities in, on or affecting the Property, and preliminary engineering and any other tests, studies or investigations done at Developer's costs (the "Assessments"). In the event the Developer determines, based on the Assessments, that the Property is unsuitable for the Project, the Developer's sole remedy is termination of this Contract and return of its Deposit. In no event will the Developer's right to the Assessments or to terminate this Contract based on the Assessments survive Closing. The City shall provide Developer with

copies of documents pertaining to the Property, such as title reports or environmental assessment reports, if any, which were generated for the City at the time when City purchased the Property.

(b) All representations, warranties, acknowledgments and covenants made by the City in this Contract shall be true and correct in all material respects and shall continue to be true and correct in all material respects as of the date of Closing.

(c) 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 use and development of the Project in accordance with this Contract, the zoning, or in accordance with any related agreements to which the City is a party or to which Developer is a party.

(d) The City shall own fee simple title to the Property.

(e) The Property shall have been rezoned to an appropriate classification in accordance with the provisions of Section 2.9.

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 date of Closing of each of the conditions listed below; provided, however, the City, at its election, evidenced by written notice delivered to Developer prior to or at the Closing, may waive any or all of the following conditions:

(a) All representations, warranties, acknowledgments and covenants made by Developer in this Contract shall be true and correct in all material respects, and shall continue to be true and correct in all material respects as of 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 use and development of the Property in accordance with this Contract, the zoning, or in accordance with any related agreements to which the City is a party or to which Developer is a party.

(c) Developer will submit to City in accordance with the City's zoning regulations two copies each of (i) the plan of development for the Project and (ii) the application of the foundation permit for the Project.

(d) Developer shall have obtained a Financing Commitment in a form and on terms satisfactory to the City and in accordance with the terms of Section 2.11 and shall have provided to the City appropriate evidence thereof.

(e) A certificate from the Virginia Board of Contractors or other evidence satisfactory to the City that the General Contractor selected by Developer to construct the Project is a registered contractor in good standing with the Virginia Board of Contractors.

(f) Such other documentation including plans and specifications, schematic drawings and renderings of the Project as may reasonably be requested by City to ensure the orderly development of the Property.

(g) City shall have approved the proposed Development Budget and Timeline in accordance with Section 2.10.

(h) City shall have approved the Final Plans in accordance with Sections 2.4 and 2.7.

(i) City shall have received a copy of the executed construction contract.

(j) City shall have received copies of payment and performance bonds each in the amount of the general construction contract for the Project in form and substance acceptable to the City.

(k) City shall have received proof satisfactory to the City of the insurance required under Section 2.13.

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 Section 3.4 hereof are unsatisfied for any reason, other than as a result of Unavoidable Delay, that Party shall be entitled, but not obligated, to extend the Outside Closing Date by providing written notice to the other Party of such extension and of the duration thereof on or prior to the date of Closing to enable such other Party to satisfy or cause to be satisfied such conditions. If, on the original or any adjourned date of Closing, any condition of the obligation of a Party to close hereunder shall remain unsatisfied and such condition has not been waived by such Party, then such Party shall have the right to terminate this Contract upon thirty (30) days written notice to the other, and unless, during such thirty (30) days written notice to the other, either (a) the Party entitled to terminate shall waive such condition(s) as provided above and agree to proceed to Closing hereunder, or (b) the Party entitled to terminate may, by written notice to the other Party, terminate this Contract in which event neither Party shall have any further rights hereunder or obligations to the other of any nature hereunder or by reason hereof, except that with respect to a failure to satisfy any condition of the Closing that results from a Party's default under this Contract, the provisions of this Contract 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 Developer the following:

(a) A special warranty deed conveying to the Developer good and marketable fee simple title to the Property free and clear of all liens and encumbrances except those permitted by this Contract and subject to the Restrictive Covenants described in Section 2.2;

(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 of the Property to Developer pursuant to the terms of this Contract;

(d) A deed of easement for the Access Easement described in Section 2.1;

(e) Any other document or instrument required hereunder or reasonably requested by Developer or its title insurance company in order to consummate the transactions contemplated herein; and

(f) Any subordination or intercreditor contract reasonably required by Developer's lender.

Section 3.7. Deliveries at the Closing by Developer.

At the Closing, Developer shall execute and/or deliver the following:

(a) Developer shall deliver to the City the Purchase Price minus the Deposit, by wire transfer, cashiers check, or certified funds.

(b) Developer shall deliver to the City evidence reasonably satisfactory to the City that Developer has been validly formed as a corporation, is in good standing, and is qualified to do business in the Commonwealth of Virginia and City of Norfolk.

(c) Developer shall deliver to the City the written opinion of counsel of Developer, 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 Developer is a corporation, duly organized and validly existing under the laws of the State of Virginia; (2) that Developer has the power to enter into the transactions contemplated by this Contract (including, without limitation, entry into this Contract); (3) that all actions by Developer required to be authorized in the transaction contemplated by this Contract have been duly authorized; (4) that this Contract and all documents required to effectuate the transactions contemplated hereby which are to be executed by Developer (including, without limitation, all agreements and instruments to be executed by Developer at the Closing) have been duly executed and delivered by Developer, and constitute binding obligations of Developer, 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.

(d) Developer shall deliver to the City resolutions of the Developer's Board of Directors ("Board"), authorizing Developer to consummate the transactions contemplated herein, such resolutions to be in form and substance reasonably satisfactory to the City, executed by the Board's President or Vice-President in their respective capacity and accompanied by a certificate executed by the Board's Secretary.

(e) Developer shall deliver to the City 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 the City, including, without limitation, proof of insurance required by Section 2.13 hereof.

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. Developer 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 and any subdivision plat required, and all other costs incurred in connection with its due diligence investigations of the Property. Each Party will pay its respective attorneys' fees.

ARTICLE IV
ADDITIONAL COVENANTS

Section 4.1. Right of Entry.

Prior to Closing, Developer and its agents, representatives and contractors will have the right to enter the Property for the purpose of surveying the Property, conducting soil tests and engineering studies and performing such other examinations as Developer deems necessary to determine the suitability of the Property for its contemplated development. Developer 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 Developer of its right of entry under this

Section. If the Closing does not occur, Developer will repair any damage to the Property caused by Developer's exercise of such right of entry at Developer's sole cost and expense.

Section 4.2 Survey.

Developer shall be responsible for securing a survey of the Property. Such survey shall be conducted by a surveyor acceptable to Developer and the City, and shall be certified to Developer, the City, and the title company furnishing the title commitment to Developer. The survey shall carve out a portion of the former Senior Center parcel, generally shown as Parcel C in Exhibit A, from the Property.

Section 4.3. 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 with Developer's contemplated development of the Property, Developer may, at its option, (i) terminate this Contract by notice to the City within thirty (30) days after Developer is notified of such taking or transfer, in which case return of the Deposit shall be the sole and exclusive remedy or (ii) proceed to Closing.

Section 4.4 . Time is of the Essence.

Time is of the essence as to the performance of the terms and conditions of this Contract. To the extent any provisions of this Contract 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 Contract.

Section 4.5. Staging Area and Construction Operations.

City does not have any obligation to Developer and/or its contractor to provide a staging area or any particular construction easements for construction of the Project. Developer

shall see that any pile driving and similar construction methods are not started before 7:00 a.m. and cease by 6:00 p.m. on weekdays, and are not started before 9:00 a.m. and cease before 5:00 p.m. on weekends and holidays.

Section 4.6. Improvements to Community Beach Park and City Property.

Developer acknowledges that Community Beach Park, which is a public park located across Ocean View Avenue from the Property (the "Park"), will have a positive impact on the success of the Project. Accordingly, Developer agrees to reimburse the City for up to Seventy-Five Thousand and 00/100 Dollars ($75,000.00) for the costs incurred by the City to make the restroom facilities and entrances to the restroom facilities at the Park compliant with the Americans with Disabilities Act (the "Restroom Facility Improvements"). Developer shall make such reimbursement payments to the city within thirty (30) days after receipt of invoices evidencing expenses incurred by the City in connection with the Restroom Facility Improvements.

Upon the request of the City, Developer shall construct a retaining wall along Norfolk Avenue at Developer's sole cost and expense. The plans and specifications for the retaining wall shall be subject to the prior written approval of the City.

The provisions of this Section 4.6 shall survive the Closing and shall not be merged into the deed conveying the Property to Developer.

ARTICLE V
TERM

Section 5.1. Term of Contract.

The term of this Contract shall commence upon the date first entered on this Contract.

ARTICLE VI
PROGRESS REPORTS

In addition to timely construction of the Project, within ten (10) days after receipt of the City's request therefor, Developer shall provide the City with a written progress report that reflects all work done since the date of the prior progress report, if any; provided, however, Developer shall not be required to provide such progress reports more frequently than monthly.

ARTICLE VII
MODIFICATIONS FOR LENDER

If in connection with obtaining Financing Commitments for this Project, any lender shall request reasonable modifications of this Contract as a condition to such financing, the parties will execute a modification of this Contract, provided that such modification does not increase the financial obligations of the City, or materially and adversely affect any rights of the City created by this Contract.

ARTICLE VIII
ADDITIONAL OBLIGATIONS

Section 8.1. Certificate of Compliance.

Upon Final Completion of the Project, City will furnish Developer an appropriate instrument certifying that Developer has complied with the provisions hereof relating to the construction of the Project. If City shall, for cause, refuse or fail to provide certification, the City shall, within ten (10) days after written request by Developer, provide Developer with a written statement indicating in adequate detail (a) how Developer has failed to complete the construction of the Project in conformity with this Contract or is otherwise in default, and (b) what measures or acts will be reasonably necessary, in the opinion of the City, for Developer to take or to perform in order to obtain certification.

Section 8.2. Maintenance of Senior Center Parcel.

The grass, trees, plants and shrubbery located within the parcel owned by the City and shown as Parcel C on Exhibit A shall be maintained by Developer in a healthy condition and neat appearance consistent with that of the Project. In the event of a default by Developer, its successors and/or assigns, in the planting and/or maintenance obligations set forth in this Section 8.2, which default continues for a period of ten (10) business days after receipt by Developer, or its successor and assigns, of written notice thereof, the required planting and maintenance work may be completed by the City at the sole cost and expense of Developer, its successors and assigns, from time to time and in keeping with this covenant, and Developer shall reimburse City for the costs thereof within thirty (30) days after receipt of an invoice therefor. If requested by the City, the Developer shall enter into a written agreement with the City evidencing its obligations under this Section 8.2 prior to Closing. The obligations of Developer under this Section 8.2 shall expire forty (40) years after the date of this Contract. The City shall have the right to make alterations to and to use Parcel C in its sole and absolute discretion.

Section 8.3. Maintenance of Access Easement.

The Developer shall be solely responsible for the maintenance, upkeep, repair, and replacement of its improvements in the Access Easement. Such obligations shall be set forth in the deed from the City to the Developer for such easement.

ARTICLE IX
EVENTS OF DEFAULT AND REMEDIES

Section 9.1 Default by Developer.

The occurrence of any of the following shall be an event of default by Developer under this Contract:

(a) The filing by Developer of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors' rights;

(b) The consent by Developer 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 Developer or the appointment of receiver, trustee, or custodian for all or a substantial part of the property or assets of Developer in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of thirty (30) consecutive days;

(d) The failure of Developer to perform or to observe any covenant, obligation, condition or requirement of this Contract not specifically named as a default in this Section 9.1, 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 9.2. Remedies.

Upon the occurrence and continuance of any event of default described in Section 9.1 or any other breach of this contract, City may elect to terminate this Contract by giving written notice of such termination to Developer, and this Contract shall terminate as of the date specified in such notice (which date shall be on or after the date of the notice of termination). In the event that termination under this Section 9.2 occurs after Closing, in addition to its other remedies, City may elect to reenter and take back title to the Property, in which event Developer shall immediately

execute a deed re-conveying the Property as well as all improvements thereon to the City, subject to any Mortgage and any tenant leases already in place for premises at the Project and provided the City pays for the Property in accordance with the following paragraph of this Section 9.2. In addition to the remedies of termination described above, a non-defaulting Party shall have available to it all other rights and remedies provided in this Contract or at law or in equity. Remedies under this Contract shall be cumulative and not restrictive of other remedies. The prevailing Party in any action or proceeding to enforce the terms of this Contract shall be entitled to recover from the unsuccessful Party all costs and expenses, including reasonable attorneys' fees incurred therein.

In the event the termination is because of a default under Section 2.12 (a), the reconveyance of title of the Property to the City shall be subject to the City paying at the time of such reconveyance the Purchase Price minus the Deposit. In the event the termination is because of a default under Section 2.12 (b), the reconveyance of title of the Property and all improvements thereon to the City shall be subject to the City paying, at the time of such conveyance, the Reverter Payment, as hereinafter defined. The "Reverter Payment" shall be (a) the sum of the Purchase Price and (b) an amount equal to ninety-five percent (95%) of the Fair Market Value, as hereinafter defined, as of the date of such notice of termination of all improvements constructed thereon to date less the outstanding principal balance (and all accrued but unpaid interest thereon) under the Mortgage through the date of such notice of termination. For purposes of this Section 9.2, "Fair Market Value" shall mean the fair market value of the Property and improvements constructed to date of such of termination as determined by mutual agreement reached within twenty (20) days of the date of notice of termination by the City, or, in the absence of such agreement, by appraisal as follows. If the parties are unable to reach agreement on the Fair Market Value within such

twenty (20) day period, then within ten (10) days thereafter Developer shall name one appraiser and the City shall name a second appraiser. The appraisers so chosen will meet within ten (10) days after the second appraiser is appointed and if, within thirty (30) days after the second appraiser is appointed, the two appraisers are not able to agree upon the Fair Market Value, they shall appoint a third appraiser. In the event the two appraisers are unable to agree upon such appointment within ten (10) days after the aforesaid time, then either Party may, as promptly as possible thereafter, request the American Arbitration Association to appoint a third appraiser. The decision of the appraisers so chosen shall be given within a period of thirty (30) days after the appointment of such third appraiser. The decision in which any two appraisers so appointed and acting hereunder concur shall in all cases be binding and conclusive upon the parties. Each Party shall pay the fees and expenses of the original appraiser appointed by such Party and the expenses of the third appraiser, if any, shall be borne equally by the parties. Any appraiser, no matter by whom designated, shall be a member in good standing, with the "MAI" designation, of the Appraisal Institute with at least ten (10) years' experience as a real estate appraiser in the Hampton Roads, Virginia area. The City's right to take back the Property is subject to the lien of any Mortgage held by any lender for the financing of the Project and subject to tenant leases already in place for premises at the Project on the date of the notice, with copies of such leases to be provided to the City at the time of re-conveyance of the Property to the City. In addition to the remedies of termination described above, a non-defaulting Party shall have available to it all other rights and remedies provided in this Contract or at law or in equity. Remedies under this Contract shall be cumulative and not restrictive of other remedies. The prevailing Party in any action or proceeding to enforce the terms of this Contract shall be entitled to recover from the unsuccessful Party all costs and expenses, including reasonable attorneys' fees incurred therein.

ARTICLE X
ASSIGNMENT LIMITATIONS

Except as otherwise expressly provided herein, prior to Final Completion of the Project, Developer, individually or jointly, may not assign this Contract or any right, title or interest hereunder, to anyone or any entity without the prior written consent of the City. Developer shall have the right to collaterally assign all or any portion of its rights in this Contract (a) to any lender or lenders prior to Final Completion of the Project or (b) to anyone after Final Completion of the Project. Developer may assign this Contract to an Affiliate of Developer; provided, however, Developer shall not be relieved of any of its obligations hereunder by any such assignment.

A permitted assignment shall not relieve the assigning party from its obligations under this Contract. Any purported assignment of this Contract or of any right, title or interest hereunder not complying with this Article X shall be void and of no force or effect.

ARTICLE XI
MISCELLANEOUS

Section 11.1. Low and Moderate Income and Resident Job Opportunities.

Developer shall make every reasonable effort to include provisions in the construction contracts for the Project, (i) requiring the contractor to make a good faith effort to see that jobs at the Project are made available to Norfolk residents and to low and moderate income persons; and (ii) prohibiting any contractor or any commercial tenant of the Project from discriminating on the basis of race, color, creed, national origin, age or sex. Developer will cooperate with the City in alerting the contractors and tenants to any training programs or other job opportunity sponsored by the City and will encourage participation in such programs.

Section 11.2. City's Project Representative.

The City hereby appoints Charles E. Rigney, Jr., or his designee as its representative for the Project who will be responsible for coordinating the City's approvals hereunder.

Section 11.3. No Broker.

Developer 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 Contract. 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 Project or the transactions contemplated by this Contract. The Parties' obligations under this Section 11.3 shall survive the Closing and any termination of this Contract.

Section 11.4. Relationship of Parties.

This Contract is not to be construed to create a partnership or joint venture between the Parties.

Section 11.5. Negotiated Document.

The Parties acknowledge that the provisions and language of this Contract have been negotiated and agree that no provision of this Contract shall be construed against any Party by reason of such Party having drafted such provision of this Contract.

Section 11.6. Governing Law.

This Contract shall be governed and construed in accordance with the laws of the Commonwealth of Virginia.

Section 11.7. Successors and Assigns.

The agreements, terms, covenants and conditions of this Contract shall be binding upon and inure to the benefit of the City, Developer, and except as otherwise provided herein, their respective successors and permitted assigns.

Section 11.8. 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 Contract.

Section 11.9. No Amendment.

Neither this Contract 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 11.10. Survival of Closing.

The provisions of this Contract shall survive the Closing.

Section 11.11. Effectiveness.

This Contract shall not be binding or effective until executed and delivered by the Parties hereto.

Section 11.12. Waiver.

The failure of any Party to insist upon strict performance of any of the terms or provisions of this Contract or to exercise any option, right or remedy contained in this Contract,

shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, of this Contract nor be deemed to have been made unless expressed in writing and signed by such Party.

Section 11.13. Exhibits.

Each Exhibit referred to in this Contract is incorporated by reference and attached to this Contract.

Section 11.14. Consent and Approvals.

(a) All consents and approvals which may be given under this Contract 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 Contract 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.

Sections 11.15. Interpretation.

For the purpose of construing this Contract, 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 11.16. "Including".

In this Contract, 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 11.17. Notices.

All notices or other communications required or desired to be given with respect to this Contract 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 810 Union Street, Suite 1101 Norfolk, VA 23510
With a copy to:	Director of Development Department of Development

500 E. Main Street, Suite 1500
Norfolk, VA 23510

With a copy to: City Attorney
Office of the City Attorney
810 Union Street, Suite 900
Norfolk, VA 23510

To Developer: Ocean View Properties, Inc.
Attention: Robert Zirpoli
844 First Colonial Road, Suite 205
Virginia Beach, VA 23451

With a copy to: Bill Bischoff, Esq.
3704 Pacific Avenue, Suite 300
Virginia Beach, Virginia 23451

Section 11.18. Entire Agreement.

This Contract constitutes the entire agreement between the Parties with respect to the Project and supersedes all prior understandings and writings, and this Contract may be amended or modified only by a writing signed by City, and Developer.

Section 11.19. Counterparts.

This Contract 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 11.20. Recordation.

This Contract may be recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia.

(signature pages to follow)

WITNESS the following signatures:

CITY OF NORFOLK

_____
Marcus D. Jones, City Manager

ATTEST:

_____
City Clerk

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

Sworn to and subscribed before me, a Notary Public in and for the City and Commonwealth aforesaid, by _____ _____ of the City of Norfolk, and by _____, Clerk of the City of Norfolk, this _____ day of _____, 2016.

_____
Notary Public

My commission expires:_____

Approved as to contents:

_____
Director, Department of Development

Approved as to form and correctness:

_____
Assistant City Attorney

OCEAN VIEW PROPERTIES, INC.

By:_____
Name:_____
Title:_____

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

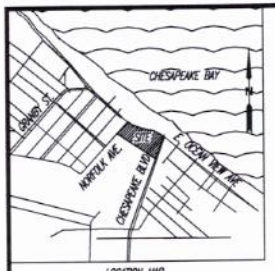
Sworn to and subscribed before me, a Notary Public in and for the City and Commonwealth aforesaid, by _____, _____ of Ocean View Properties, Inc., this _____ day of _____, 2016.

_____
Notary Public

My commission expires:_____

EXHIBIT A

Plat of Property



LOCATION MAP
1" = 2000'

GENERAL NOTES

1. NO TITLE REPORT WAS PROVIDED FOR THIS SURVEY. ALL EASEMENTS MAY NOT BE SHOWN.
2. NO WETLAND DELINEATION MARKERS WERE OBSERVED DURING THE FIELD SURVEY.
3. THE REFERENCE MERIDIAN FOR THIS SURVEY IS BASED ON CITY OF NORFOLK CONTROL MONUMENTS GPS042, GPS069, AND GPS155 VIRGINIA STATE PLANE COORDINATE SYSTEM, SOUTH ZONE NAD 1983/1993 (HARN). COORDINATES ARE EXPRESSED IN US SURVEY FEET.
4. FURTHER DEVELOPMENT OF THESE LOTS INCLUDING ANY FILLING OR PHYSICAL ALTERATIONS OF THE LOTS MAY REQUIRE ADDITIONAL PERMITS FROM THE CITY OF NORFOLK OR OTHER GOVERNMENTAL AGENCIES.
5. THE TOTAL AREA ENCOMPASSED WITHIN THIS RESUBDIVISION = 277,895 SQUARE FEET/ 6.380 ACRES.
6. ALL INTERNAL LOT AND DEED LINES ARE HEREBY VACATED.

SOURCE OF TITLE

THE PROPERTY EMBRACED WITHIN THE LIMITS OF THIS RESUBDIVISION WAS CONVEYED TO THE CITY OF NORFOLK, VA FROM ROBERT D. AND LILY K. GARRISON BY DEED DATED FEBRUARY 1, 1938 AND RECORDED BY DEED BOOK 350A, PAGE 223 IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE CITY OF NORFOLK, VIRGINIA AND PREET, L.L.C. A VIRGINIA LIMITED LIABILITY COMPANY, BY DEED DATED JANUARY 28, 2010, AND RECORDED BY INSTRUMENT # 100002269 IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE CITY OF NORFOLK, VIRGINIA.

I, BETH ANNE G. CAMPBELL, A LAND SURVEYOR DO HEREBY CERTIFY THAT THIS PLAT WAS MADE BY ME, THE UNDERSIGNED, AT THE DIRECTION OF THE OWNER AND THAT THIS SUBDIVISION IS ENTIRELY WITHIN THE BOUNDARIES OF LAND COVERED BY DEEDS DESCRIBED BELOW, AND THAT CONCRETED, STEEL PINS AS SPECIFIED BY THE SUBDIVISION REGULATIONS OF NORFOLK, VIRGINIA ARE ACTUALLY IN PLACE AT POINTS MARKED THUS, " ○ ", AND THAT THEIR LOCATIONS ARE CORRECTLY SHOWN.

SIGNED: _____ DATE: _____

COMMONWEALTH OF VIRGINIA
BETH ANNE G. CAMPBELL
Lic. No. 003316
05/01/16
LAND SURVEYOR

CLERK'S NOTE

VIRGINIA:

IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE CITY OF NORFOLK, VIRGINIA, ON THE_____DAY OF _____20__ AT _____ THIS PLAT WAS THIS DAY RECEIVED AND UPON CERTIFICATE OF ACKNOWLEDGEMENT, THERETO ANNEXED, ADMITTED TO RECORD IN MAP BOOK:_____ PAGE:_____

_____, CLERK

TESTE:

THE PLATTING OR DEDICATION OF THE FOLLOWING DESCRIBED LAND, RESUBDIVISION OF PROPERTY OF "RESUBDIVISION OF PARCELS A AND A-1" IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNERS.

OWNER: CITY OF NORFOLK, VIRGINIA

APPROVED: _____, DATE:_____
RONALD H. WILLIAMS, JR., DEPUTY CITY MANAGER

APPROVED: _____, DATE:_____
R. BRECKENRIDGE DAUGHTREY, CITY CLERK

CERTIFICATE OF NOTARIZATION

STATE OF VIRGINIA
CITY/COUNTY OF NORFOLK, TO WIT;

I, _____, A NOTARY PUBLIC IN AND FOR THE CITY/COUNTY AND STATE AFORESAID, DO HEREBY CERTIFY THAT RONALD H. WILLIAMS, JR., DEPUTY CITY MANAGER AND R. BRECKENRIDGE DAUGHTREY, CITY CLERK, WHOSE NAMES ARE SIGNED TO THE FOREGOING WRITING BEARING DATE ON THE___DAY OF _____20___, HAVE ACKNOWLEDGED THE SAME BEFORE ME IN THE CITY AND STATE AFORESAID.

GIVEN UNDER MY HAND THIS___DAY OF_____, 20__

MY COMMISSION EXPIRES:_____

SIGNED: NOTARY PUBLIC

REGISTRATION NUMBER AND SEAL

THE UNDERSIGNED CERTIFY THAT THE RESUBDIVISION AS IT APPEARS ON THIS PLAT CONFORMS TO THE APPLICABLE REGULATIONS RELATING TO THE SUBDIVISION OF LAND AND IS ACCORDINGLY APPROVED. BY SUCH APPROVAL, THE UNDERSIGNED DO NOT CERTIFY AS TO THE CORRECTNESS OF THE BOUNDARY, STREET OR OTHER LINES SHOWN ON THIS PLAT.

APPROVED: _____DATE:_____
DIRECTOR OF CITY PLANNING AND COMMUNITY DEVELOPMENT
CITY OF NORFOLK, VIRGINIA

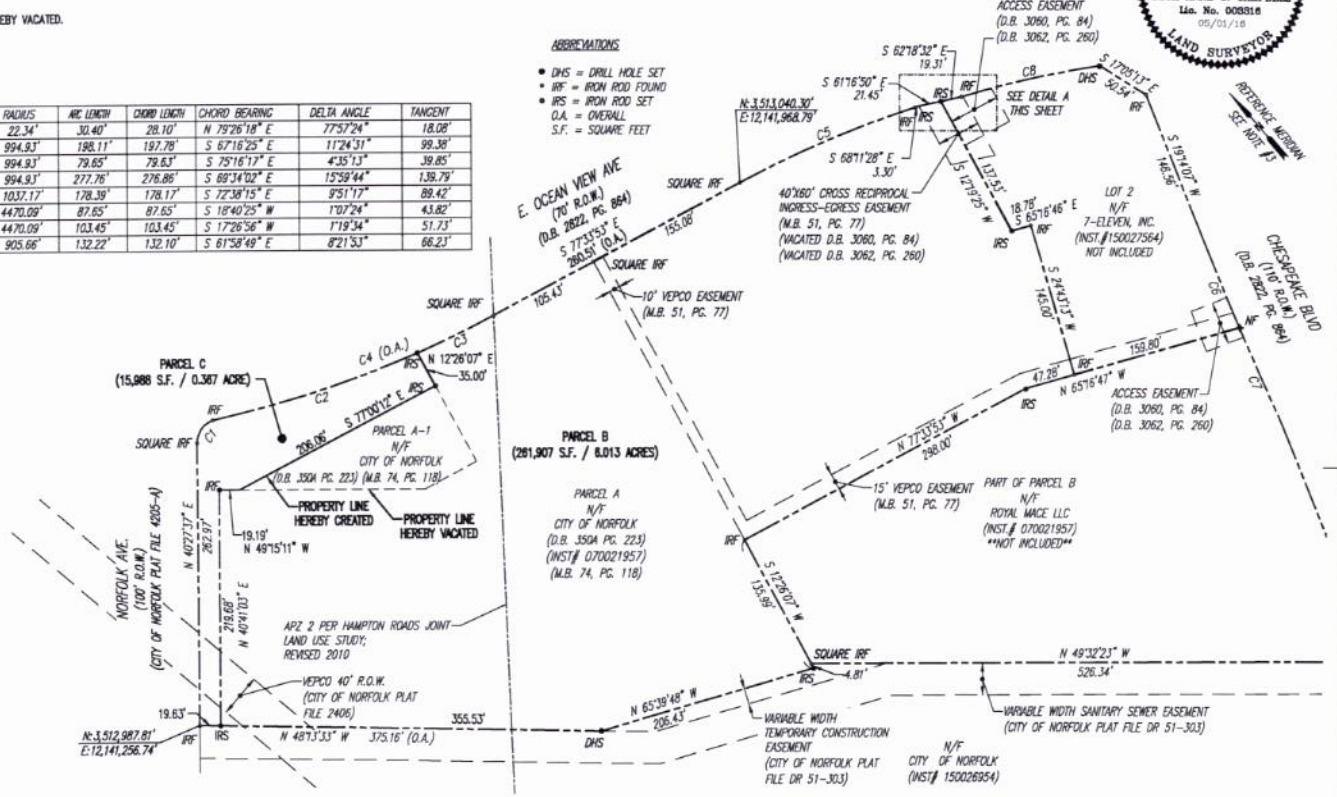
APPROVED: _____DATE:_____
DIRECTOR OF PUBLIC WORKS,
CITY OF NORFOLK, VIRGINIA

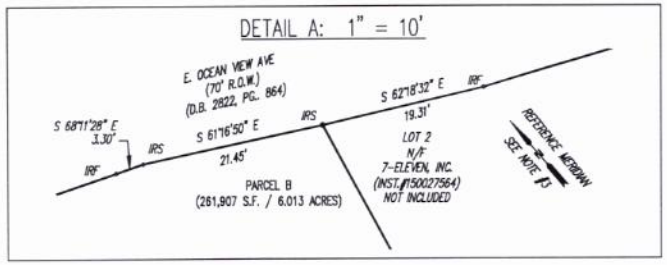
APPROVED: _____DATE:_____
DIRECTOR OF UTILITIES,
CITY OF NORFOLK, VIRGINIA

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE	TANGENT
C1	22.34'	30.40'	28.10'	N 79°26'18" E	77°57'24"	18.08'
C2	994.93'	198.11'	197.78'	S 67°16'25" E	11°24'31"	99.38'
C3	994.93'	79.65'	79.63'	S 75°16'17" E	4°35'13"	39.85'
C4	994.93'	277.76'	276.86'	S 69°34'02" E	15°59'44"	139.79'
C5	1037.17'	178.39'	178.17'	S 72°38'15" E	9°51'17"	89.42'
C6	4470.09'	87.65'	87.65'	S 18°40'25" W	1°07'24"	43.82'
C7	4470.09'	103.45'	103.45'	S 17°26'56" W	1°19'34"	51.73'
C8	905.66'	132.22'	132.10'	S 61°58'49" E	8°21'53"	66.23'

ABBREVIATIONS

- DHS = DRILL HOLE SET
- IRF = IRON ROD FOUND
- IRS = IRON ROD SET
- O.A. = OVERALL
- S.F. = SQUARE FEET





RESUBDIVISION OF PARCELS A AND A-1

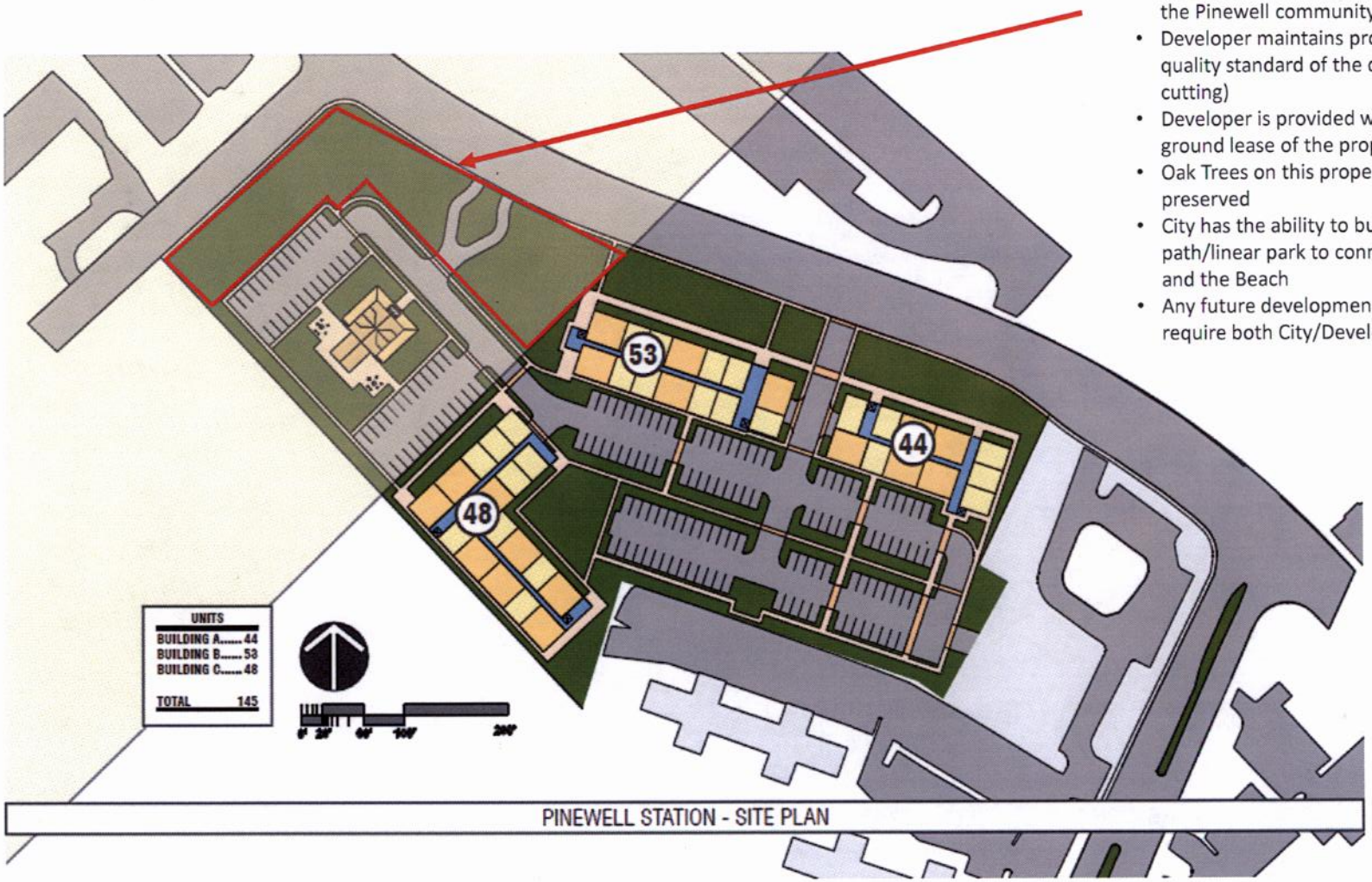
(M.B. 74, PG. 118) (D.B. 350A, PG.. 223) (INST.# 070021957)
NORFOLK, VIRGINIA

PROJECT #: 15096.1	MIDATLANTIC SURVEYING - LAND DESIGN
SCALE: 1" = 80'	5305 CLEVELAND STREET SUITE 102 VIRGINIA BEACH, VA 23462
PRELIM DATE: 12-16-2015 FINAL DATE: 05-1-2016	www.mas-ld.com
DRAWN BY: ANM/BAC	PHONE: 757-557-0888 / FAX: 757-416-5351
SHEET 1 OF 1	

EXHIBIT B
Developer's Proposal

[SEE ATTACHED]

Pinewell Station Proposal



City Retains Ownership of Property

- Provides a buffer between the project and the Pinewell community
- Developer maintains property to the high quality standard of the development (grass cutting)
- Developer is provided with long term ground lease of the property
- Oak Trees on this property are to be preserved
- City has the ability to build a future path/linear park to connect the Golf Course and the Beach
- Any future development of this area would require both City/Developer approval

EXHIBIT C
Sidewalk Specifications

[SEE ATTACHED OR IN THE ABSENCE OF AN ATTACHMENT, THE CITY'S STANDARD SIDEWALK SPECFICATIONS IN THE AREA OF THE PROJECT SHALL GOVERN]