City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

January 28, 2014

From: Steven J. Anderson, Director, Department of Development

Subject: Repeal Ordinance #44,461 granted December 13, 2011 and Authorize the Sale of a GEM Lot located at 722 Maltby Avenue to Norfolk Redevelopment and Housing Authority

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

Ward/Superward: 4/7

Approved: Marcus D. Jones, City Manager

Item Number: **PH-11**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Norfolk Redevelopment and Housing Authority
201 Granby Street
Norfolk, VA 23510

III. **Description**

This agenda item authorizes this Ordinance to dispose of a vacant, non-standard size parcel of City-owned land. This parcel is a GEM Lot and was acquired by the City under Section 58.1-3970.1 of the Code of Virginia, 1950, as amended. This parcel is to be conveyed to the owner of the adjacent property, Norfolk Redevelopment and Housing Authority under the GEM Side Lot for Development Disposition Program to create a standard size lot.

IV. **Analysis**

Council authorized the sale of the GEM Lot to Plumb Line Ministries by Ordinance # 44,461 on December 13, 2011. Plumb Line Ministries no longer wishes to purchase the property. NRHA owns the adjacent vacant lot and wishes to obtain the GEM parcel to create a conforming lot for development. No specific City use has been identified for this property and therefore, conveyance to the NRHA is consistent with the goals of the GEM Side Lot for Development Disposition Program.

V. Financial Impact

NRHA will purchase the GEM Lot for the assessed value $20,000.

VI. Environmental

There are no known environmental issues associated with this property.

VII. Community Outreach/Notification

In accordance with the Norfolk City Charter and Virginia State law, a legal notice was posted in *The Virginian-Pilot*. In addition, 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 Development - Division of Real Estate and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Conveyance Agreement
- Declaration of Protective and Restrictive Covenants

11/4/2013-km

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT. Development

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE REPEALING ORDINANCE #44,461 ADOPTED DECEMBER 13, 2011 AND AUTHORIZING THE SALE TO NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY OF A CERTAIN PARCEL OF PROPERTY DESCRIBED AS ES MALTBY AVENUE, ACQUIRED BY THE CITY OF NORFOLK PURSUANT TO SECTION 58.1-3970.1 OF THE CODE OF VIRGINIA, 1950, AS AMENDED, FOR THE SUM OF $20,000.00, AND APPROVING THE TERMS AND CONDITIONS OF THE PURCHASE AND SALE AGREEMENT.

- - -

WHEREAS, by Ordinance #44,461, adopted on December 13, 2011, Council authorized the sale to Plumb Line Ministries, Inc., of a certain parcel of property described as ES Maltby Avenue, and being further described in Exhibit A attached hereto, for the sum of $20,000.00; and

WHEREAS, the City has since been advised that Plumb Line Ministries no longer wishes to purchase the property described as ES Maltby Avenue and Ordinance #44,461 should therefore be repealed; and

WHEREAS, Norfolk Redevelopment and Housing Authority has offered to purchase the said property for the sum of $20,000.00 in accordance with the terms and conditions of the Purchase and Sale Agreement, attached hereto as Exhibit B; now therefore,

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

Section 1:- That Ordinance #44,461 adopted on December 13, 2011, authorizing the sale of property to Plumb Line Ministries, Inc., is hereby repealed.

Section 2:- That the sale of the parcel of property, described in Exhibit A, to Norfolk Redevelopment and Housing Authority for the sum of $20,000.00, in accordance with the terms and conditions of the Purchase and Sale Agreement attached hereto as Exhibit B, is hereby approved.

Section 3:- That the City Manager, and the other proper officers of the City, are authorized to execute the Agreement on behalf of the City of Norfolk and, upon payment of the purchase price, to deliver to Norfolk Redevelopment and Housing Authority, 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 parcel of property.

Section 4:- That the City Manager is further authorized to correct, amend, or revise the Purchase and Sale Agreement as may be necessary to carry out the intent of the Council.

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

EXHIBIT "A"

ALL that certain lot, piece or parcel of land with the buildings and improvements thereon, situate, lying and being in the City of Norfolk, State of Virginia, and bounded and described as follows:

BEGINNING at a point on the eastern side of Maltby Avenue at the northern line of land now or formerly Mrs. Brown's; thence easterly along the said Brown's line One Hundred Twenty Five (125) feet; thence northerly and parallel with said Maltby Avenue Thirty (30) feet; thence westerly and at right angles to said Maltby Avenue and along the line of a lot now or formerly S.W. Leggetts One Hundred Twenty Five (125) feet to the eastern side of Maltby Avenue; thence southerly along the eastern side of Maltby Avenue Thirty (30) feet to the point of beginning.

EXHIBIT B

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT made this _____ day of _____, 2013, between the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia ("City"), and **NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY,** a political subdivision of the Commonwealth of Virginia ("NRHA").

RECITALS:

A. City is the owner in fee simple absolute of a certain parcel of real property, together with all rights and appurtenances thereunto pertaining, located in the City of Norfolk, Virginia, known as 722 Maltby Avenue, more particularly described in Exhibit A, attached to and made a part of this Agreement (the "Property"), the City having acquired the same pursuant to the provisions of Section 58.1-3970.1 of the Code of Virginia, 1950, as amended.

B. Upon acquisition of the Property, the City recorded a Declaration of Protective and Restrictive Covenants ("Restrictive Covenants") in the Clerk's Office of the Circuit Court of the City of Norfolk, as Instrument No. 060009770, a copy of which is attached as Exhibit B, 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.

C. The acquisition of the Property by the City resulted in the City owning nonstandard lots that abut certain property owned by NRHA.

D. The conveyance of the Property to NRHA will enable NRHA 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.

E. The City therefore desires to sell the Property to NRHA and NRHA desires to purchase the Property in accordance with the terms and conditions of this Agreement.

F. 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 agrees to convey and NRHA agrees to accept the conveyance of the Property, together with all easements, rights, and appurtenances thereto as follows:

1. SALE. City agrees to sell and NRHA 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 Thousand Dollars ($20,000.00), and the Purchase Price will be paid in the form of a certified check, or by wire transfer of funds at closing.

3. DEPOSIT. NRHA has made a deposit (the Deposit) of Two Thousand Five Hundred Dollars ($2,500.00), which the City is holding in an account until Closing. At Closing, the Deposit shall be applied toward the Purchase Price, or returned to the Purchaser, if this Agreement is terminated in accordance with its provisions.

4. CONVEYANCE.

a. The City agrees to convey the property to NRHA, "AS IS," by Special Warranty Deed, free and clear of all encumbrances, tenancies, and liens (for taxes or otherwise), except as may otherwise be provided in this Agreement, subject to applicable easements and restrictive covenants of record, and specifically the Restrictive Covenants attached hereto as Exhibit B.

b. Possession of the Property will be given to NRHA at Closing.

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

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 120 days of the effective date of the ordinance authorizing the conveyance of the property by the City ("Effective Date"), unless extended by mutual agreement of the parties.

6. CONDITIONS. NRHA's obligations are expressly conditioned upon the satisfaction of each of the following conditions in the sole determination of NRHA, 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 120 days after the Effective Date, NRHA 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 NRHA at NRHA's expense, and such other testing and reports as may be reasonably required by NRHA or recommended in the Phase I Report, any such additional testing and reports to be at NRHA's expense.

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

7. NO REPRESENTATIONS AND WARRANTIES BY CITY. NRHA acknowledges that the City has made no representations or warranties whatsoever in regard to the Property.

8. LOT NOT BUILDABLE. NRHA acknowledges that the Property 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.

9. 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:

NRHA: Norfolk Redevelopment and Housing Authority
Attn: James Holloman
201 Granby Street
Norfolk, Virginia 23510-1816

City: Director, Department of Development
City of Norfolk
500 E. Main Street, Suite 1500
Norfolk, Virginia 23510

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

11. 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.

12. BROKERAGE OR AGENT'S FEES. Neither the City nor NRHA 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.

13. DEFAULT AND REMEDIES.

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

(i) Terminate this Agreement; or

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

14. 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.

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

16. 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.

WITNESS the following duly authorized signatures and seals:

(SIGNATURE PAGES TO FOLLOW)

CITY OF NORFOLK

By: _____
City Manager

ATTEST:

_____
City Clerk

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

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

Given under my hand this _____ day of _____, 20___.

_____
Notary Public

Registration No._____

Contents Approved:

_____
Director, Department of Development

Approved as to Form and Correctness:

_____
Deputy City Attorney

NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY

By:_____

Title:_____

STATE OF VIRGINIA

CITY/COUNTY OF NORFOLK, to-wit:

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

Given under my hand this ___day of _____, 20___.

_____
Notary Public

Registration No._____

EXHIBIT "A"

ALL that certain lot, piece or parcel of land with the buildings and improvements thereon, situate, lying and being in the City of Norfolk, State of Virginia, and bounded and described as follows:

BEGINNING at a point on the eastern side of Maltby Avenue at the northern line of land now or formerly Mrs. Brown's; thence easterly along the said Brown's line One Hundred Twenty Five (125) feet; thence northerly and parallel with said Maltby Avenue Thirty (30) feet; thence westerly and at right angles to said Maltby Avenue and along the line of a lot now or formerly S.W. Leggetts One Hundred Twenty Five (125) feet to the eastern side of Maltby Avenue; thence southerly along the eastern side of Maltby Avenue Thirty (30) feet to the point of beginning.

EXHIBIT B

Instrument Control Number

[ ]

2006 FEB 28 P 2:40 000268

Commonwealth of Virginia
Land Record Instruments
Cover Sheet - Form A

FEB 23 060009770

[ILS VLR Cover Sheet Agent 1.0.66]

TAX EXEMPT	CORP		
		Date of Instrument:	[2/27/2006]
		Instrument Type:	[DEC]
		Number of Parcels	[1]
		Number of Pages	[6]
		City [x] County [ ]	[City Of Norfolk] (Box for Deed Stamp Only)

First and Second Grantors

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

First and Second Grantees

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

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

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

Prior Instr. Recorded at: City [ ] County [ ] [ ] Percent. In this Juris. [100]
Book [ ] Page [ ] Instr. No [060004753]
Parcel Identification No (PIN) [3658-3600]
Tax Map Num. (If different than PIN) [n/a]
Short Property Description [E S Maltby Avenue]
[ ]
Current Property Address (Address 1) [E S Maltby 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] [ ] [ ]

Raphael Watson

Instrument Control Number

Commonwealth of Virginia
Land Record Instruments
Continuation Cover Sheet
Form B

[ILS VLR Cover Sheet Agent 1.0.66]

Date of Instrument: [2/27/2006]
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
☐	☒	☐	☐	[Watson	] [Raphael	] [L.	] [ ]
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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
722 MALTBY AVENUE (TAX ACCOUNT #3658-3600)

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

WITNESSETH:

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

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

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

A. PERMITTED AND PROHIBITED USES.

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

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

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

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

B. REVIEW AND APPROVAL OF PLANS

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

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

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

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

C. GRANTEE'S ACCEPTANCE

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

D. EFFECTS OF PROTECTIVE AND RESTRICTIVE COVENANTS.

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

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

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

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

E. REMEDIES.

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

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

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

CITY OF NORFOLK

By: _____ [SEAL]
City Manager

Attest:

_____
City Clerk 02/17/06

Approved as to form and correctness:

_____
Deputy City Attorney

STATE OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, Shelia W. Wilder, a Notary Public in and for the City of Norfolk, in the State of Virginia, whose term of office expires on the 31st day of August, 2006, do hereby certify that Regina V.K. Williams, City Manager and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing instrument dated Feb. 16, 2006 have acknowledged the same before me in my City and State aforesaid.

Given under my hand this 16th day of February, 2006.

_____ [SEAL]
Notary Public

EXHIBIT "A"
Tax Account Number 3658-3600

ALL that certain lot, piece or parcel of land with the buildings and improvements thereon, currently known as 722 Maltby Avenue, situate, lying and being in the City of Norfolk, State of Virginia, and bounded and described as follows:

BEGINNING at a point on the eastern side of Maltby Avenue at the northern line of land now or formerly Mrs. Brown's; thence easterly along the said Brown's line One Hundred Twenty Five (125) feet; thence northerly and parallel with said Maltby Avenue Thirty (30) feet; thence westerly and at right angles to said Maltby Avenue and along the line of a lot now or formerly S.W. Leggetts One Hundred Twenty Five (125) feet to the eastern side of Maltby Avenue; thence southerly along the eastern side of Maltby Avenue Thirty (30) feet to the point of beginning.

INSTRUMENT #060009770
RECORDED IN THE CLERK'S OFFICE OF
NORFOLK ON
FEBRUARY 28, 2006 AT 02:40PM
GEORGE E. SCHAEFER, CLERK

RECORDED BY: DXJ