C: Dir., Development

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

February 11, 2014

From: Steven J. Anderson
Director of Development

Subject: Conveyance of a GEM Lot Located at 1720 Todd Street to Erick Cooper

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

Ward/Superward: 4/7

Approved: Marcus D. Jones, City Manager

Item Number: **PH-14**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Erick Cooper
5847 Bartee Street
Norfolk, Va 23502

III. **Description**

This agenda item authorizes the scheduling of a Public Hearing to consider the 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, Erick Cooper under the GEM Side Lots for Side Yard Disposition Program.

IV. **Analysis**

Mr. Cooper proposes to use this GEM Lot to extend his yard (see attached aerial). Conveying this GEM Lot to Mr. Cooper will enable the City to place the property back on the tax rolls. No specific City use has been identified for this property and therefore, conveyance to the adjacent property owner is consistent with the goals of the GEM Side Lot for Side Yard Disposition Program.

V. **Financial Impact**

This parcel will be conveyed to Mr. Cooper at no cost. However, he will pay typical costs of closing. The Fiscal Year 2013 Assessed Value of the Parcel is $15,400; resulting in new tax revenue of $177.10 annually.

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

VI. Environmental

There are no known environmental issues associated with this property.

VII. Community Outreach/Notification

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

1720 Todd Street

1/14/2014-km

Form and Correctness Approved: BAP

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT.

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE AUTHORIZING THE CONVEYANCE TO ERICK COOPER, OF A CERTAIN PARCEL OF PROPERTY, ACQUIRED BY THE CITY OF NORFOLK PURSUANT TO SECTION 58.1-3970.1 OF THE CODE OF VIRGINIA, 1950, AS AMENDED, AND APPROVING THE TERMS AND CONDITIONS OF THE CONVEYANCE AGREEMENT.

- - -

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

WHEREAS, the parcel of real estate described in Exhibit A, attached hereto and made a part hereof, has been conveyed to the City of Norfolk by a Special Commissioner's deed executed and delivered pursuant to a decree entered by the Circuit Court of the City of Norfolk in accordance with the provisions of Section 58.1-3970.1 of the Code of Virginia, 1950, as amended; and

WHEREAS, the parcel of real estate described in Exhibit A is a non-conforming lot upon which no stand-alone structure can be built and, therefore, the said lot has very limited value; and

WHEREAS, Council has determined that said lot is not needed for any of the uses or purposes of the City; and

WHEREAS, the Council is agreeable to conveying the said parcel of real estate to Erick Cooper, upon certain terms and conditions consistent with the Conveyance Agreement attached hereto as Exhibit B; now therefore,

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

Section 1:- That, notwithstanding the provisions of Section 2-12 of the Norfolk City Code, 1979, which requirements are hereby specifically waived, the conveyance of the parcel of property described in Exhibit A to Erick Cooper, upon certain terms and conditions consistent with the Conveyance Agreement attached as Exhibit B, is hereby authorized and approved.

Section 2:- That the City Manager, and the other proper officers of the City, are authorized to execute a Conveyance Agreement on behalf of the City of Norfolk, to deliver to Erick Cooper 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 3:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

Exhibit "A"
Tax Account No. 4888-1600

ALL THAT certain lot with the buildings and improvements thereon, in the City of Norfolk, Virginia, described as follows:

Beginning at a point on the east side of Todd Street 124.9 feet from the northeast corner of Berkeley Avenue and Todd Street; thence northerly along the east side of Todd Street thirty (30) feet to the southern line of Lot Number 95; thence easterly sixty seven and one-half (67 1/2) feet to the center of the Block; thence southerly and parallel with Todd Street thirty (30) feet to the northern line of Lot Number 93; thence westerly along the northern line of Lot Number 93 to the point of beginning. It being the western half of Lot Number 94 as shown on B. B. Wilson's Plat of Campostella Lots.

EXHIBIT
B
to ordinance

CONVEYANCE AGREEMENT

THIS CONVEYANCE AGREEMENT made this ____ day of January, 2014, between the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia ("City"), and **ERICK B. COOPER,** ("Cooper").

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, 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. 050053493, 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 Cooper.

D. The conveyance of the Property to Cooper will enable Cooper to care for and maintain the Property in a manner that will enhance both the appearance and value of his adjoining property, as well as the other properties located in that section of the City, thereby relieving the City of the burden and expense of caring for and maintaining the Property, while at the same time returning the Property to the real estate tax rolls.

E. The City therefore desires to convey the Property to Cooper and Cooper desires to have the Property conveyed to Cooper 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 mutual promises contained in this Agreement and specifically Cooper's agreement to assume the responsibility and expense of caring for and maintaining the Property in a manner that will enhance the neighborhood and meet any applicable requirements of the Norfolk City Code, the City

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

1. CONVEYANCE.

a. The City agrees to convey the property to Cooper, "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. Cooper shall assume the responsibility and expense of caring for and maintaining the Property in a manner that will enhance the neighborhood and meet the requirements of any applicable provisions of the Norfolk City Code.

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

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

d. **Cooper acknowledges and agrees that the City is represented by the City Attorney and that the City Attorney cannot and will not represent Cooper's interests in this matter.**

2. PURCHASE PRICE. Due to the non-conforming size of the Property and its very limited use and lack of marketability, Cooper shall not be required to pay any monetary compensation to the City for the conveyance of this Property, in accordance with City policy regarding the conveyance of side lots under the GEM program.

3. 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.

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

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

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

6. LOT NOT BUILDABLE. Cooper 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.

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

Cooper: Erick Cooper
1323 Savory Crescent
Chesapeake, Virginia 23320

City: Department of Communications
City of Norfolk
City Hall Building - 3rd Floor
810 Union Street
Norfolk, Virginia 23510
Attn: David Yaeger

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

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

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

10. DEFAULT AND REMEDIES.

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

(i) Terminate this Agreement; or

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

11. REVERSION OF TITLE. Cooper acknowledges that this conveyance is subject to the Restrictive Covenants attached as Exhibit B, including the right of reverter as set forth therein.

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

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

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

WITNESS the following duly authorized signatures and seals:

CITY OF NORFOLK

By: _____
City Manager

ATTEST:

_____
City Clerk

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

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

Given under my hand this _____ day of _____, 2014.

_____
Notary Public

Registration No._____

APPROVED AS TO CONTENTS:

_____
Director of Development

APPROVED AS TO FORM AND CORRECTNESS:

_____
Deputy City Attorney

_____

ERICK B. COOPER

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

I, _____, a Notary Public in and for the City of Norfolk, in the State of Virginia, whose term of office expires on _____, do hereby certify that Erick B. Cooper, whose name is signed to the foregoing Conveyance Agreement, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this ___day of _____, 2014.

_____

Notary Public

Registration No._____

Exhibit "A"
Tax Account No. 4888-1600

ALL THAT certain lot with the buildings and improvements thereon, in the City of Norfolk, Virginia, described as follows:

Beginning at a point on the east side of Todd Street 124.9 feet from the northeast corner of Berkeley Avenue and Todd Street; thence northerly along the east side of Todd Street thirty (30) feet to the southern line of Lot Number 95; thence easterly sixty seven and one-half (67 1/2) feet to the center of the Block; thence southerly and parallel with Todd Street thirty (30) feet to the northern line of Lot Number 93; thence westerly along the northern line of Lot Number 93 to the point of beginning. It being the western half of Lot Number 94 as shown on B. B. Wilson's Plat of Campostella Lots.

EXHIBIT B

2005 DEC 19 P 12:34 000151

DEC.19 050053493

Instrument Control Number

Commonwealth of Virginia
Land Record Instruments
Cover Sheet - Form A

[ILS VLR Cover Sheet Agent 1.0.66]

TAX EXEMPT	CORP
x	
x	

Date of Instrument: [12/15/2005]
Instrument Type: [DEC]
Number of Parcels [1]
Number of Pages [6]
City [x] County [ ] [City Of Norfolk]

(Box for Deed Stamp Only)

First and Second Grantors

Last Name	First Name	Middle Name or Initial	Suffix
[City of Norfolk]	[N/A]	[N/A]	[N/A]
[Callahan]	[F.]	[Sullivan]	[ ]

First and Second Grantees

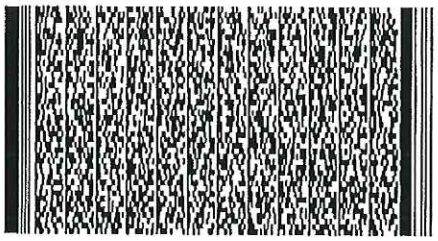
Last Name	First Name	Middle Name or Initial	Suffix
[City of Norfolk]	[a Municipal Corporation]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]

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

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

Prior Instr. Recorded at: City [x] County [ ] [N/A] Percent. in this Juris. [0]
Book [N/A] Page [N/A] Instr. No [050042717]
Parcel Identification No (PIN) [48881600]
Tax Map Num. (If different than PIN) [n/a]
Short Property Description [1720 Todd Street]
[ ]
Current Property Address (Address 1) [1720 Todd Street]
(Address 2) [ ]
(City, State, Zip) [Norfolk] [VA] [ ]

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



Cover Sheet Page # 1 of 2

Cecil Woodley

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: [12/15/2005]
Instrument Type: [DEC]

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

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

(Box for Deed Stamp Only)

Grantors/Grantees/Parcel Continuation Form B

TAX EXEMPT	GRANTOR	GRANTEE	CORP	Last Name	First Name	Middle Name or Initial	Suffix
	x			[Woodley	] [Cecil	] [A.	] [ ]
				[	] [	] [	] [ ]
				[	] [	] [	] [ ]
				[	] [	] [	] [ ]
				[	] [	] [	] [ ]
				[	] [	] [	] [ ]
				[	] [	] [	] [ ]
				[	] [	] [	] [ ]
				[	] [	] [	] [ ]
				[	] [	] [	] [ ]
				[	] [	] [	] [ ]
				[	] [	] [	] [ ]
				[	] [	] [	] [ ]
				[	] [	] [	] [ ]
				[	] [	] [	] [ ]
				[	] [	] [	] [ ]

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
1720 TODD STREET (TAX ACCOUNT #4888-1600)

THIS DECLARATION, made this 7th day of ~~October~~ November, 2005, by the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia ("Declarant"), whose address is City Hall, 810 Union Street, Norfolk, Virginia, 23510.

WITNESSETH:

WHEREAS, Declarant is the owner of certain property located at 1720 Todd Street, City of Norfolk, Virginia, Tax Account #4888-1600, and more particularly described in Exhibit A, attached hereto and made a part hereof ("Property"); and

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

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

A. PERMITTED AND PROHIBITED USES.

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

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

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

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

B. REVIEW AND APPROVAL OF PLANS

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

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

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

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

C. GRANTEE'S ACCEPTANCE

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

D. EFFECTS OF PROTECTIVE AND RESTRICTIVE COVENANTS.

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

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

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

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

E. REMEDIES.

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

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

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

CITY OF NORFOLK

By: _____ [SEAL]
City Manager

Attest:

_____
City Clerk

Approved as to ~~form~~ and correctness:

_____
Deputy City Attorney

STATE OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, Susan R. Leonard, a Notary Public in and for the City of Norfolk, in the State of Virginia, whose term of office expires on the 31st day of August, 2008, do hereby certify that Regina V.K. Williams, City Manager and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing instrument dated Nov 7, 2005 have acknowledged the same before me in my City and State aforesaid.

Given under my hand this 7th day of November, 2005.

Susan R. Leonard [SEAL]
Notary Public

Exhibit "A"
Tax Account No. 4888-1600

ALL THAT certain lot with the buildings and improvements thereon, numbered according to the present system of street numbering as 1720 Todd Street, in the City of Norfolk, Virginia, described as follows:

Beginning at a point on the east side of Todd Street 124.9 feet from the northeast corner of Berkeley Avenue and Todd Street; thence northerly along the east side of Todd Street thirty (30) feet to the southern line of Lot Number 95; thence easterly sixty seven and one-half (67 ½) feet to the center of the Block; thence southerly and parallel with Todd Street thirty (30) feet to the northern line of Lot Number 93; thence westerly along the northern line of Lot Number 93 to the point of beginning. It being the western half of Lot Number 94 as shown on B. B. Wilson's Plat of Campostella Lots.

IT BEING the same property conveyed to Cecil A. Woodley and Winnie Mae Woodley, his wife, by deed from Glasser Investment Corporation, a Virginia corporation, dated July 1, 1946, and recorded July 5,1 946 in the Clerk's Office of the Circuit Court of City of Norfolk, Virginia, in Deed Book 465, Page 496.

INSTRUMENT #030002473
RECORDED IN THE CLERK'S OFFICE OF
NORFOLK ON
DECEMBER 17, 2003 AT 12:24PM
GEORGE E. SCHAEFER, CLERK

RECORDED BY: DAJ