City of NORFOLK

C: Dir., Office to End Homelessness

To the Honorable Council
City of Norfolk, Virginia

March 4, 2014

From: Michael Wasserberg, Director
Office to End Homelessness

Subject: Land Disposition and Development Contract between the City of Norfolk and Virginia Supportive Housing

Reviewed: Wynter C. Benda, Assistant City Manager

Ward/Superward: Ward 4/ Super Ward 7

Approved: Marcus D. Jones, City Manager

Item Number: R-2

I. **Recommendation:** Approval

II. **Description**

This agenda item seeks City Council's approval of the Land Disposition and Development Contract between the City and VSH, a Virginia non-stock corporation, for the 1.2 acre parcel of real property located off Church Street in the Huntersville area for the construction of subsidized single room occupancy ("SRO") and affordable housing studio apartments.

III. **Analysis**

The 80 unit development, which VSH proposes to build on the Church Street property, will be the sixth such project constructed by VSH since the Regional Task Force on Homelessness invited the organization to the region to address the need for permanent supportive housing to serve single adults facing homelessness. The City served as the host community for the first SRO (Gosnold Place) and was to serve as the host for the fifth development following similar projects in Virginia Beach, Portsmouth and Chesapeake. Although work on identifying a location has been ongoing since 2011, the City agreed to allow Virginia Beach to serve as the host for the fifth location.

The proposed project will be built on vacant property on Church Street in the Huntersville neighborhood adjacent to the railroad line and will include the following:

- Be a part of the Planned Development, i.e., Church Street Station, proposed by Luna Development.

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

- Be one of the first such projects in the region to combine SRO units with affordable studio workforce housing apartments.
- Be the first such project to locate SRO units alongside market rate apartments in a mixed income setting.
- Be completely funded through the efforts of VSH to secure financing and resources through state, local and private entities.
- Bring the number of SRO units developed within the region by VSH, with support from the City, to 320.
- Yield construction jobs and 10 permanent employment positions.
- Place the property on the tax rolls.

IV. Financial Impact

The real property to be conveyed would be part of the City's contribution to the project as the host city. The appraised value of the property would also be shown as part of the community resources dedicated to the project in VSH's application to the Virginia Housing and Development Authority seeking a low income housing tax credit allocation as part of the project's financing plan. In addition to strengthening the VSH application, the donation is anticipated to trigger contributions to the project from neighboring communities.

VSH will be responsible for securing all of the funds required to design, construct, equip and operate the single room occupancy and affordable studio apartments.

V. Environmental

N/A

VI. Community Outreach/Notification

Public notification for this agenda item was conducted through the City's agenda notification process and via outreach efforts through the Huntersville Task Force and Civic League.

VII. Board/Commission Action

The SRO project is part of the development area covered by the application for rezoning submitted by Luna Development. The Luna Development proposal was presented to the Planning Commission on December 19, 2013. The City's Planning Commission recommended denial (6-1) of the rezoning into a planned development, i.e., Church Street Station.

VIII. Coordination/Outreach

This letter has been coordinated with the City Attorney's Office and the Department of Planning and Community Development.

Supporting Material from the Department of City Attorney's Office:

- Land Disposition and Development Contract

Form CCO-003

Form and Correctness Approved:

By _____
Office of the City Attorney

NORFOLK, VIRGINIA

Contents Approved:

By _____
DEPT.

ORDINANCE No.

R-2

AN ORDINANCE AUTHORIZING THE LAND DISPOSITION AND DEVELOPMENT CONTRACT ("LDDC") TO BE ENTERED INTO WITH VIRGINIA SUPPORTIVE HOUSING, AND AUTHORIZING THE CONVEYANCE OF A PARCEL OF REAL PROPERTY TO VSH.

- - -

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

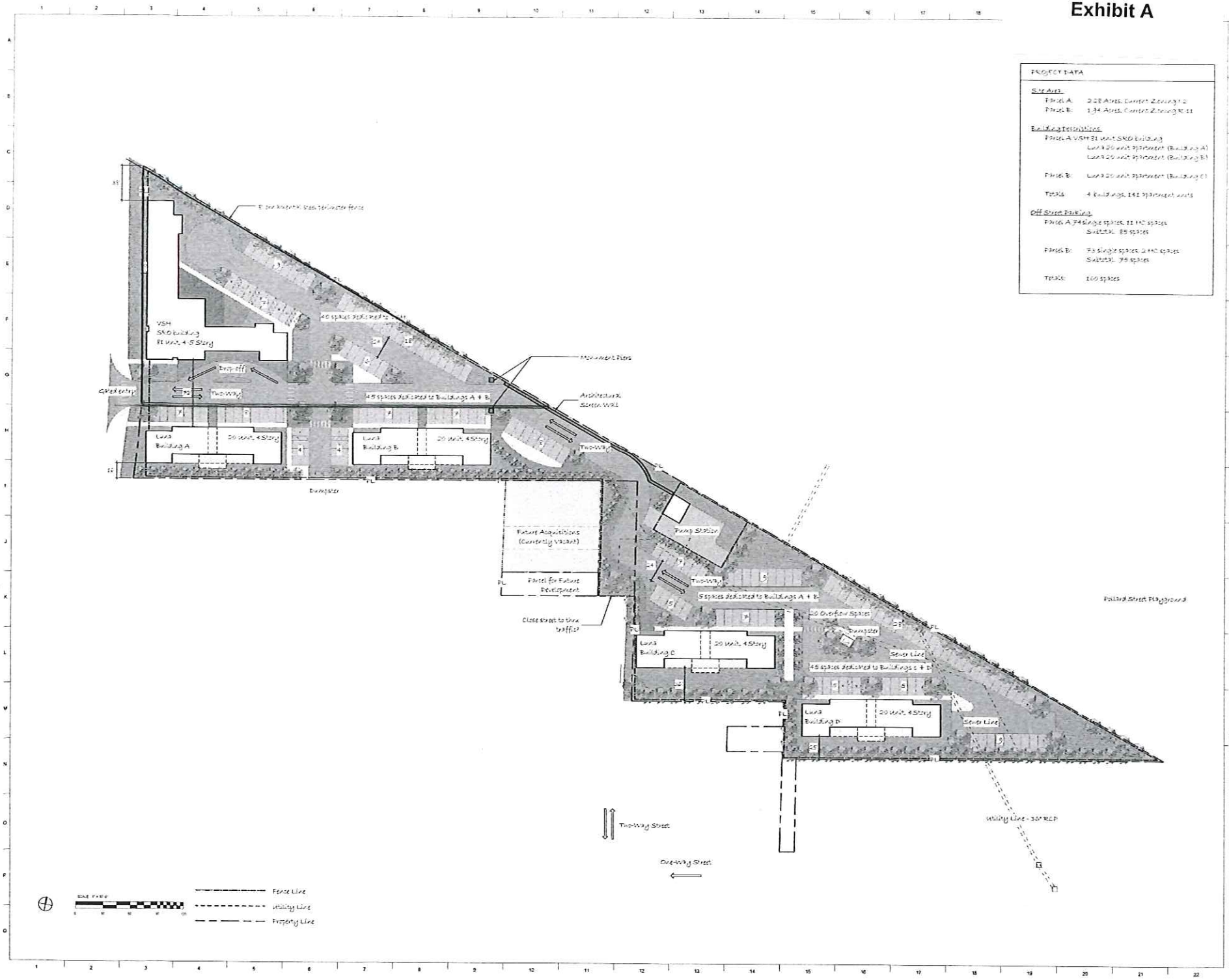
Section 1:- That the LDDC between the City of Norfolk and Virginia Supportive Housing ("VSH") is hereby authorized.

Section 2:- That the conveyance of a parcel of real property, as shown in Exhibit A hereto attached, by the City to VSH is hereby approved.

Section 3:- That the City Manager is hereby authorized to negotiate and execute an agreement with VSH, substantially in the same form and terms as in the LDDC that is hereto attached as Exhibit B, satisfactory to the City Attorney and consistent with this ordinance.

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

Exhibit A



PROJECT DATA
Site Area
Parcel A: 2.28 Acres, Current Zoning I-2
Parcel B: 1.94 Acres, Current Zoning R-11
Building Descriptions
Parcel A: VSH 81 unit SRO building
Luna 20 unit apartment (Building A)
Luna 20 unit apartment (Building B)
Parcel B: Luna 20 unit apartment (Building C)
Totals: 4 buildings, 141 apartment units
Off Street Parking
Parcel A: 74 single spaces, 11 HC spaces
Subtotal: 85 spaces
Parcel B: 73 single spaces, 2 HC spaces
Subtotal: 75 spaces
Totals: 160 spaces
VSH SRO building 81 unit, 4-5 Story
Drop off
Two-Way
Gated entry
40 spaces dedicated to VSH
45 spaces dedicated to Buildings A + B
Monument Piers
Architectural Screen Wall
Luna Building A
20 unit, 4 Story
Luna Building B
20 unit, 4 Story
Dumpster
Future Acquisitions (Currently Vacant)
Parcel for Future Development
Close street to thru traffic?
Pump Station
5 spaces dedicated to Buildings A + B
20 Overflow Spaces
Dumpster
Sewer Line
45 spaces dedicated to Buildings C + D
Luna Building C
20 unit, 4 Story
Luna Building D
20 unit, 4 Story
Sewer Line
Pollard Street Playground
Utility Line - 36" RCP
Two-Way Street
One-Way Street
Fence Line
Utility Line
Property Line
VA design architects, pc
VSH + Luna Development
Church Street Planned Development
2000 Church Street, Norfolk, VA
A100

Exhibit B

LAND DISPOSITION AND DEVELOPMENT CONTRACT

BETWEEN

THE CITY OF NORFOLK, VIRGINIA

AND

VIRGINIA SUPPORTIVE HOUSING

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LAND DISPOSITION AND DEVELOPMENT CONTRACT

THIS LAND DISPOSITION AND DEVELOPMENT CONTRACT ("Agreement" or "Contract"), is made this ____day of _____, 2014, by and between the CITY OF NORFOLK, VIRGINIA ("City"), a municipal corporation of the Commonwealth of Virginia, and VIRGINIA SUPPORTIVE HOUSING ("VSH"), a Virginia non-stock corporation. The parties to this Agreement may be collectively referred to by the term "Parties" or individually "Party".

WHEREAS, the City is the owner of certain parcel of real property located in the City of Norfolk, Virginia, off Church Street in the Huntersville area, 1.2 acre in size, more or less ("Property"); and

WHEREAS, VSH desires to build subsidized single room occupancy ("SRO") and affordable housing studio apartments ("Project") for residents of the City and of the region; and

WHEREAS, the City desires to have the Project built on the Property;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

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 given it below.

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

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

(c) "City Delay" means any delay in completion of the Project resulting from any failure by City to perform timely any of its obligations under this Contract.

(d) "Closing Date" means the date thirty (30) days after the final approval of the Construction Documents by appropriate department or departments of the City's administrative staff such that no condition to issuance of a building permit for the Project remains unsatisfied other than payment of the fee for its issuance. VSH will diligently pursue the permitting process. The Closing Date will be no later than March 31, 20, 2015, except in the event of an Unavoidable Delay.

(e) "Completed" or "Completion" means, with respect to the Project, the date when the construction of the building is substantially completed so as to permit use of the building for the purposes for which it was intended and a certificate of occupancy has been issued, which date may precede the full completion of all punch-list items, landscaping and similar design and development functions.

(f) "Contract" means this Land Disposition and Development Contract between the City and VSH.

(g) "Contractor" or "Contractors" means the general contractors and subcontractors for construction of the Project.

(h) "Development Timeline" means a timeline for development of the Project prepared by VSH and approved by City pursuant to Section 2.10.

(i) "Due Diligence Period" means the one hundred twenty (120) days after the date of execution of this Contract that is necessary for VSH to obtain the necessary information, assessments, studies, etc. before acquiring the Property. The Due Diligence Period may be extended by VSH for

up to two (2) additional thirty (30) days periods upon delivery of written notice to City prior to the expiration of the then current Due Diligence Period.

(j) "Financing Commitment" means a commitment or commitments reasonably satisfactory to the City, which has or have been accepted by VSH and which are approved by the City, to finance the construction of the Project. Such approval will not be unreasonably withheld. 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 form and level of detail typically utilized by the prospective lender or investor in similar transactions, including requirements for closing 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.

(k) "Project" means the 80-units Project, with 40 subsidized units for formerly homeless adults, 34 of which to be occupied by Norfolk residents, and 40 units for adults earning 50% or less of the Area Median Income.The Project includes related facilities to be constructed by VSH on the Property, including parking and landscaping.

(l) "Property" means the parcel of land consisting of approximately 1.2 acre to be conveyed to VSH by the City, and which is more particularly described in **Exhibit A1** and shown on the plat attached as **Exhibit A2**. the property includes all buildings, structures, improvements and fixtures on said land, if any, and all appurtenant interests and property rights related to the land, subject to easements and encumbrances which run with the land.

(m) "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 VSH's contractors.

II. AGREEMENT TO CONVEY AND DEVELOP PROPERTY

2.1 Conveyance of Property "As Is", Title and Title Insurance Commitment.

City will convey fee simple title to the Property to VSH by special warranty deed which title shall be good and marketable and free of any liens, encumbrances, or other title defects which would prohibit or impair the use of the Property for the purposes contemplated by this Contract. VSH, at its expense, shall furnish a title commitment to the City within thirty (30) days of the full execution of this Contract, issued by a title company that is acceptable to VSH. Upon execution of this Agreement, the City shall provide VSH with copies of any title commitments or title policies it has for the Property. VSH shall have sixty (60) days from the receipt of the title commitment to review and make objections. The City shall have thirty (30) days to cure any title defects which are not acceptable to VSH and/or its lender. The City, however, shall have the option of declining to cure any defect and if the City does decline to cure any defect, or does not cure any defect that it has agreed to cure, VSH shall have the right to terminate this Contract as its exclusive remedy for termination of the Contract and any related claim. VSH will accept from City the Property, subject to the terms and conditions set forth in this Contract. Except as expressly set forth in this Contract, VSH is accepting the use and conveyance of the Property "As Is." VSH shall have one hundred and twenty (120) days after execution of the Contract or to the day before Closing, whichever is earlier, to exercise its rights under Section 4.1. In the event VSH determines, in its sole and absolute discretion, that the Property is unsuitable for constructing the Project, its sole remedy shall be termination of the Contract by giving written notice of termination to the City prior to the end of the Due Diligence Period.

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 VSH and its 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 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 VSH) to waive compliance by VSH 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 the Project. 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 VSH to secure repayment of a loan or loans or cause a reversion or forfeiture of title. 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:

2.2.a The Property and Project shall not be used for industrial purposes, with the exception of parking, but shall initially and for at least a period of forty (40) years be used for residential purposes.

2.2.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.

2.2.c VSH 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.

2.2.d VSH agrees on its behalf, 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 Project. This covenant being given for the benefit of the public, the United States is expressly recognized as a beneficiary thereof and is entitled to enforce it for its own benefit or that of the public.

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

2.2.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 or shrubbery and maintained in a healthy condition and neat appearance. Upon default in such planting or in its maintenance, by VSH, its successors and assigns, after receiving in writing a notice to cure within thirty (30) days of date of notice, agree that the necessary planting and work may be done by the City at the expense of VSH, its successors and assigns, from time to time and in keeping with this covenant.

2.2.g VSH agrees, on its behalf, its successors and assigns, that the Project and its appurtenant premises will be maintained in a sound condition and neat and well maintained appearance, ordinary wear and tear excepted. Necessary repairs, maintenance and upkeep will be performed so as to preserve the attractive appearance, the physical integrity and the sanitary and safe condition of the building. Upon default after receiving in writing a notice to cure within thirty (30) days after date of such notice, if such repairs, maintenance or upkeep are not performed, the necessary repairs, maintenance and upkeep may be done by the City at the expense of VSH, its successors and assigns, in keeping with this covenant.

2.2.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, 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.

2.2.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 enclosures and screens will be compatible with the design of the Project.

2.2.j No 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.

2.2.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.

2.2.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.

2.2.m It is intended and agreed hereby that the Restrictive Covenants under 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 VSH and its successors and assigns as the case may be.

2.3 Title Insurance.

At Closing, VSH shall obtain, at VSH's expense, an ALTA Owner's policy of Title Insurance in at least the amount of the assessed value of the Property.

2.4 Design of Project.

In accordance with Section 2.7 below, the design and materials of the Project shall be subject to separate review and approval by the City's Design Review Committee and the City's Planning Commission. The Project will consist of the building, facilities and elements described in VSH's Proposal. The design of the Project and the construction materials used within will qualify the Project as of a quality consistent with other residential projects approved by the City on property formerly owned by the City.The City's approval of the design and materials used for the Project shall be deemed to satisfy the requirements of the preceding sentence.

VSH may not proceed with construction of the Project until plans for the Project are approved by the Design Review Committee and Planning Commission. VSH shall submit the preliminary plans to the Planning Director prior to the date when design is approximately 10% complete and again when the design is 90% complete and when the design is sufficiently complete such that VSH's contractor can proceed with construction ("Plans"). VSH may not proceed with construction until the 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 that the design at the 90% stages and the Final Plans are in substantial conformance with the previous plans provided and as properly modified in accordance with this Contract. Notwithstanding the foregoing, VSH shall have the right to make changes in the design and construction to the extent required to meet applicable codes, rules, regulations, statutes and ordinances. VSH must also obtain all other approvals required by the Norfolk City Code and other applicable laws and regulations. If VSH, despite using commercially reasonable efforts, is unable to obtain approval by the City of the Plans and all other governmental approvals and permits required to commence construction of the Project prior to Closing, VSH may terminate this Contract by giving

the City written notice thereof prior to the Closing, in which event this Contract shall be deemed to have been terminated without prejudice to any of the parties.

2.5 Construction and Design of Parking.

VSH shall be responsible for the design, construction, and equipping of the parking lot in accordance with applicable zoning requirements.

2.6 Relocation and Construction of Utilities.

VSH 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 VSH. In addition, VSH 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.

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 notice to VSH 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, 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 VSH, 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, VSH 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 VSH 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 VSH. Each further revision and resubmission of any of the Project design documents by VSH, 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.

2.8 Modifications of Design by VSH.

If VSH 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 VSH, the Project design shall be deemed to incorporate the modifications that have been approved by the City. If the City determines, in its reasonable judgment, that the proposed modifications are not acceptable, the City shall so notify VSH, specifying in reasonable detail in what respects they are not acceptable, and VSH 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 for review and approval within thirty (30) days after such notification from the City.

2.9 Rezoning.

This Contract is conditioned upon the rezoning of the Property to a zoning classification that permits the use of the Property as contemplated in the Project. If the appropriate zoning classification does not occur within the time frame dictated by VSH's schedule for financing and/or construction of the Project, VSH shall so notify the City and this Contract shall be considered null and void.

2.10 Construction Schedule.

Subject to City Delays and/or Unavoidable Delays, the Parties desire that the Project be completed on or before the date one (1) year after commencement of construction; therefore, VSH shall commence construction on or before June 1, 2015, on such schedule as is reasonably required to achieve this desired completion date. A Development Timeline providing for Completion of the Project within the time period provided in the preceding sentence will be furnished by VSH to the City's Director of the Office to End Homelessness prior to the Closing. Final completion shall occur within two (2) months following Completion, subject to Unavoidable Delays and/or City Delays.

2.11 Financing Commitment.

Prior to Closing VSH shall produce evidence, in form and substance reasonably satisfactory to the City's Director of Finance, of VSH's financial ability to design, construct and equip the Project ("Financing Commitment"). City shall approve the financing commitments in writing before Closing. VSH shall have secured a Financing Commitment for the funds necessary to satisfy its obligations under the Contract no later than Closing. Failure to secure Financing Commitment satisfactory to the City will permit the City to terminate the Contract without prejudice to either Party.

2.12 Failure to Meet Construction Schedule.

In the event that (y) VSH fails to commence construction as specified in section 2.10, or (z) construction ceases for ninety (90) consecutive days (other than, in either case, because of

Unavoidable Delay and/or City Delay), except if such cessation is due to the termination of construction contract by VSH of Contractor, and if VSH makes reasonable effort to recommence construction, then such 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 VSH and upon the conclusion of such thirty (30) day period and no cure by VSH, this Contract shall terminate except for the City's remedies as outlined below. In the event that delay of construction commencement or completion is caused by City Delay or force majeure, the commencement and completion dates shall be extended but only by the number of days of delay caused by the City Delay or force majeure.

In the event that this Contract is terminated as provided in the above paragraph, City shall have the right but not the obligation to re-enter and take title to the Property, in which event VSH shall execute a deed re-conveying the Property as well as all improvements to the City, subject to any mortgage ("Mortgage") securing the Project to which the Property is subject pursuant to the Financing Commitment, provided the City pays the Reverter Payment to VSH as provided in 8.2. Notwithstanding anything to the contrary in this Contract, upon the Completion of the Project the right of reentry and reconveyance of title as set forth above and in Section 8.2 herein shall lapse.

2.13 Risk of Loss and Insurance.

After Closing, VSH shall bear the risk of loss on the Property and all improvements thereto including the Project. VSH agrees that in the event the Project is partially or fully damaged or destroyed prior to Completion and occupancy that subject to the Project's lender allowing the use of insurance proceeds of reconstruction, VSH 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 8.2 with respect to a default under Section 2.12(y).

Beginning on the Date of Closing VSH (or its general contractor) 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, 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 construct and equip the Project in the event of part or complete destruction of 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 VSH 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 VSH's obligation to close.

III. CLOSING AND CONSIDERATION

3.1 Date and Place of Closing.

The closing ("Closing") shall take place at Office of the City Attorney, 900 City Hall, Norfolk, Virginia 23510, or at any other location in Norfolk agreed to by the Parties, on the Closing Date.

3.2 Consideration.

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

3.3 Conditions to VSH's Obligation to Close.

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

3.3.a VSH shall have up to one hundred twenty (120) days after execution of the Contract to have an environmental assessment, identification of utilities in, on or affecting Property preliminary engineering and any other tests, studies or investigations done at VSH's costs. In the event the assessment or other test determines that the Property is unsuitable for the development, VSH's sole remedy is termination of the Contract. In no event will VSH's right to the assessment or to terminate Contract based on the assessment survive Closing. City shall provide VSH with copies of documents pertaining to the Property, such as title reports or environmental assessment reports, if any, which were generated for City at the time when City purchased the Property.

3.3.b Closing shall not occur before the property is rezoned by the City of Norfolk to an appropriate classification.

3.3.c 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 at the date of Closing.

3.3.d 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 Contracts to which the City is a party, or to which VSH is a party.

3.3.e The City shall own good and marketable fee simple title free and clear of all liens and encumbrances except those permitted by this Contract to the Property.

3.3.f The City shall have approved the Plans and shall have also approved VSH plans for landscaping as required pursuant to Section 2.2(j) above.

3.3.g The Construction Documents shall have been approved by the City and all other governmental authorities whose approval is required in order for VSH to obtain a building permit and all other permits conditioned only upon payment of the requisite fee.

3.3.h VSH shall have obtained the approval of a final subdivision plat from the City.

3.4 Conditions of City's Obligation to Close.

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

3.4.a All representations, warranties, acknowledgments and covenants made by VSH in this Contract shall be true and correct in all material respects, and shall continue to be true and correct in all material respects at the date of Closing.

3.4.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 Contracts to which the City or VSH is or are a party.

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

3.4.d VSH shall have obtained a Financing Commitment in a form and on terms satisfactory to the City and shall have provided to the City appropriate evidence thereof.

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

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

3.4.g City shall have approved the Plans in accordance with Sections 2.4 and 2.7.

3.4.h City shall have reviewed the executed construction contract for the Project.

3.4.i City shall have received proof satisfactory to the City of insurance required in Section 2.12.

3.5 Failure to Satisfy Conditions.

In the event that any of the conditions of a Party's obligation to close hereunder as set forth in Section 3.3 or 3.4 hereof are unsatisfied for any reason, other that Unavoidable Delay and/or, in the case of VSH, City Delay, that Party shall be entitled but not obligated, upon notice delivered to the

other Party to this Contract at or prior to the Closing Date, to receive one adjournment of thirty (30) days of the Closing to enable such other Party to satisfy or cause to be satisfied such conditions. If on the original or any adjourned Closing Date, any conditions(s) of the obligation of a Party to close hereunder shall remain unsatisfied and has not been waived by such Party, then either (a) the Party entitled to terminate shall waive such conditions(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.

3.6 Deliveries at Closing by City.

At the Closing, City will execute and deliver to VSH the following:

3.6.a A special warranty deed conveying good and marketable fee simple title to the Property free and clear of all liens and encumbrances except those permitted by this Contract to VSH subject to the restrictive covenants described in Section 2.2;

3.6.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;

3.6.c A certified copy of the ordinance adopted by the City authorizing the conveyance of the Property to VSH pursuant to the terms of this Contract;

3.6.d A 1099 report form pursuant to Section 6045 of the Internal Revenue Code of 1986, as amended;

3.6.e Form R-5E as required by the Virginia Department of Taxation to evidence that City is a Virginia resident;

3.6.f Any other document or instrument required hereunder or reasonably requested by VSH or its title insurance company in order to consummate the transactions contemplated herein; and

3.7 Deliveries at the Closing by VSH.

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

3.7.a VSH shall deliver to the City evidence reasonably satisfactory to the City that VSH is an active Virginia non-stock corporation and is qualified to do business in the Commonwealth of Virginia and City of Norfolk.

3.7.b VSH shall deliver to the City the written opinion of counsel of VSH, 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 VSH is a non-stock corporation, duly organized and validly existing under the laws of the State of Virginia; (2) that VSH has the power to enter into the transactions contemplated by this Contract (including, without limitation, entry into this Contract); (3) that all actions by VSH 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 VSH prior to or at Closing have been duly executed and delivered by VSH, and constitute binding obligations of VSH, 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; and

3.7.c 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 VSH, including but not limited proof of insurance required by Section 2.13, which document or instrument will be in form and substance reasonably acceptable to City.

3.8 Prorations.

Proratable items relating to the Property, including real estate taxes, will be prorated as of the date of Closing.

3.9 Closing Costs.

City is exempt from grantor's tax on the Deed. VSH 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 attorney's fees.

IV. ADDITIONAL COVENANTS

4.1 Right of Entry.

Before the Closing, VSH 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 VSH deems necessary to determine the suitability

of the Property for its contemplated development. VSH 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 VSH of its right of entry under this Section. If the Closing does not occur, VSH will repair any damage to the Property caused by VSH's exercise of such right of entry.

4.2 Survey.

VSH shall be responsible for securing a survey of the Property. Such survey shall be conducted by a surveyor acceptable to VSH and City, shall be certified to VSH and City, and to the title company furnishing the title commitment to VSH.

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 VSH's contemplated development of the Property, VSH may, at its option, (i) terminate this Contract by notice to the City within thirty (30) days after VSH is notified of such taking or transfer, or (ii) proceed to Closing.

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.

4.5 Staging Area and Construction Operations.

City does not have any obligation to VSH and/or its contractor to provide a staging area or any particular construction easements for construction of the Project. VSH 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 7:00 a.m. and cease before 5:00 p.m. on weekends and holidays except utility connections may be scheduled at times least disruptive to the Project and/or neighbors.

V. TERM

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

VI. 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.

VII. ADDITIONAL OBLIGATIONS OF CITY

Upon Final Completion of the Project and the issuance of a certificate of occupancy, City will furnish VSH an appropriate instrument certifying that VSH 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 VSH, provide VSH with a written statement indicating in adequate detail how VSH has failed to complete the construction of the Project in conformity with this Contract, or is otherwise in default, and what measures or acts will be reasonably necessary in the opinion of the City, for VSH to take or perform in order to obtain certification.

VIII. EVENTS OF DEFAULT AND REMEDIES

8.1 Default by VSH.

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

8.1.a The filing by VSH of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors' rights;

8.1.b The consent by VSH to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights;

8.1.c The entering of an order for relief against VSH or the appointment of receiver, trustee, or custodian for all or a substantial part of the property or assets of VSH in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of thirty (30) consecutive days;

8.1.d The failure of VSH to perform or to observe any covenant, obligation, condition or requirement of this Contract not specifically named as a default in this Section 8.1, 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.

8.2 Remedies.

Upon the occurrence and continuance of any event of default described in Section 8.1 after written notice and expiration of any applicable cure period without cure, City may elect to terminate

this Contract by giving written notice of such termination to VSH, 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 default occurs after Closing but before Substantial Completion of the Project, and such default is under Section 2.12, in addition to its other remedies, City may elect to reenter and take back title to the Property in which event VSH shall re-convey such title to the City. In the event the termination is because of a default under Section 2.12 (z), 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". The "Reverter Payment" shall be an amount equal to ninety-five percent (95%) of the Fair Market Value, as of the date of such notice of termination, of all improvements constructed on the Property 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, "Fair Market Value" shall mean the fair market value of the improvements constructed to date of such 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 VSH 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 shall not 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. 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 attorney's fees incurred therein.

IX. ASSIGNMENT LIMITATIONS

Except as otherwise specifically provided herein, prior to Completion of the Project, VSH may not assign this Contract or any right, title or interest hereunder, to any entity other than an Affiliate without the City's written permission. VSH shall have the right to collaterally assign all or any portion of its rights in this Contract to any lender or lenders prior to the completion of the Project.

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 IX shall be void and of no force or effect .

X. MISCELLANEOUS

10.1 Low Income, Moderate Income and Resident Job Opportunities.

VSH 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 job opportunities at the

Project are made available to Norfolk residents, and low and moderate income persons; and (ii) prohibiting any contractor from discriminating on the basis of race, color, creed, national origin, age or sex. VSH will cooperate with the City in alerting the contractors and tenants to any training programs or other job opportunity sponsored by the City, and encourage participation in such programs.

10.2 City's Project Representative.

The City hereby appoints Michael Wasserberg, Director of the Office to End Homelessness, or his designee as its representative for the Project who will be responsible for coordinating the City's approvals hereunder.

10.3 No Broker.

VSH shall indemnify and hold the City 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 VSH in connection with the Project or the transactions contemplated by this Contract. VSH's obligations under this Section shall survive the Closing and any termination of this Contract.

10.4 Relationship of Parties.

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

10.5 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.

10.6 Governing Law.

This Contract shall be governed and construed by the laws of the Commonwealth of Virginia.

10.7 Successors and Assigns.

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

10.8 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.

10.9 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.

10.10 Survival of Closing.

The provisions of this Contract shall survive the Closing.

10.11 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.

10.12 Exhibits.

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

Section 10.13 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. "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, shall be deemed to include the words "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 10.14 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:	Marcus D. Jones, City Manager 1100 City Hall 810 nion Street Norfolk, VA 23510
With a copy to:	Michael Wasserberg, Director City of Norfolk, Office to End Homelessness 232 Main Street, Suite 2501 Norfolk, VA 23510
With a copy to:	Bernard A. Pishko, City Attorney 900 City Hall 810 Union Street Norfolk, VA 23510
To VSH:	Allison Bogdanovic, Executive Director Virginia Supportive Housing 5008 Monument Avenue P.O. Box 8585 Richmond, VA 23226

10.13 Entire Contract.

This Contract constitutes the entire agreement between the Parties with respect to the Project and supersedes all prior understandings and writings.

10.16 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.

10.17 Recordation.

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

WITNESS the following signatures:

CITY OF NORFOLK

_____
Marcus D. Jones, City Manager

ATTEST:

_____
City Clerk

VIRGINIA SUPPORTIVE HOUSING

By_____
Name:
Title:

Approved as to contents:

_____
Director of Office to End Homelessness

Approved as to form and correctness:

_____
Deputy City Attorney

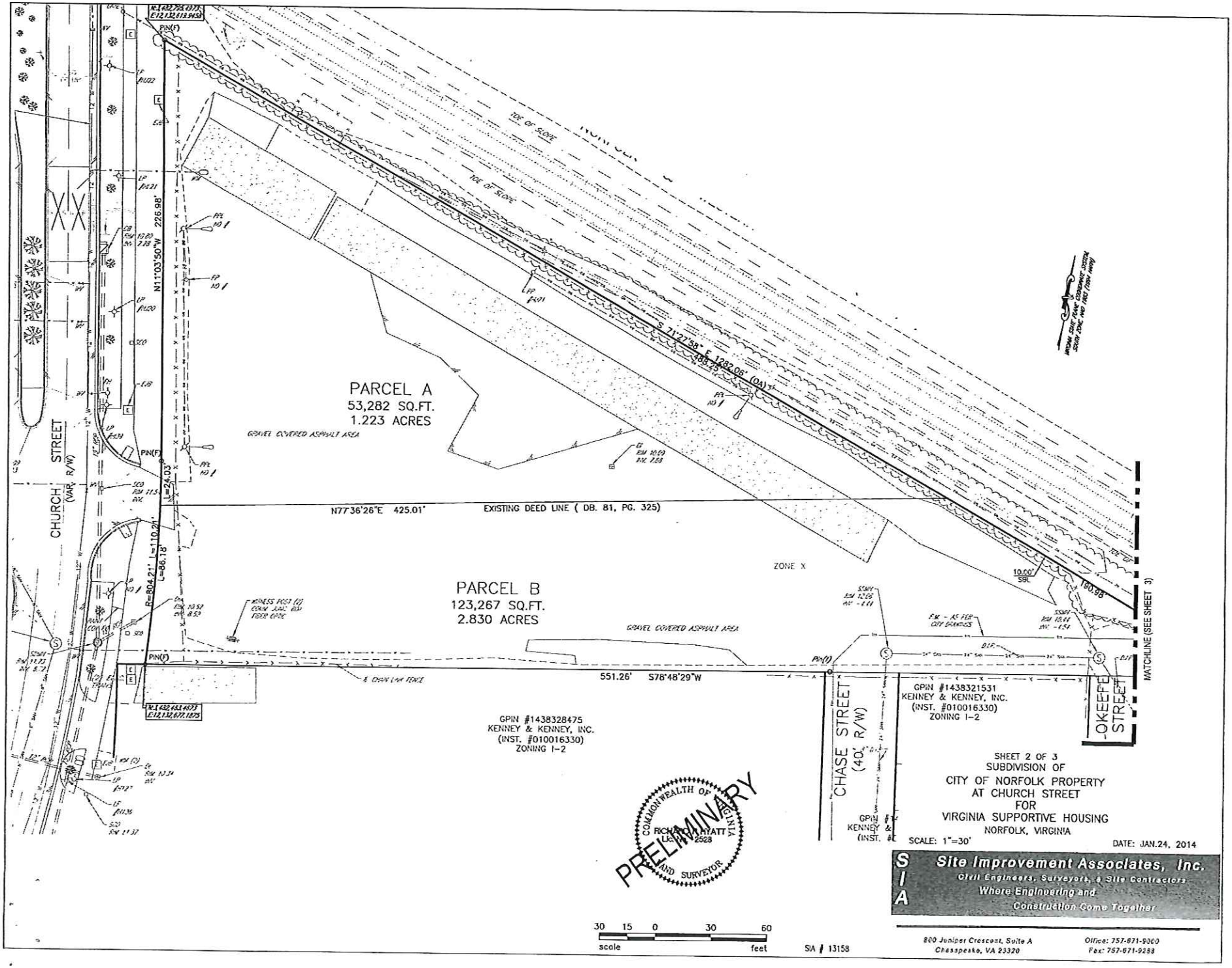
EXHIBIT A-1

RE: LEGAL DESCRIPTION – PARCEL A (VSH Portion)

Beginning at a pin located in the eastern right of way line of Church Street at the intersection of the southern right of way of the Norfolk and Western Railroad, said point being 728.69′ from the intersection of the eastern right of way line of Church Street with the northern right of way line of C Avenue; thence leaving said right of way line of Church Street and continuing in an easterly direction along said right of way line of Norfolk and Western Railroad along a bearing of S 71◦27′58″ E a distance of 488.25′ to a point; thence turning and leaving right of way line of Norfolk and Western Railroad in a westerly direction along a bearing of S 77◦36′26″ W a distance of 425.01′ to a point located in the eastern right of way line of Church Street; thence turning in a northerly direction along said right of way line of Church Street along a curve to the left having a radius of 804.21′ and a length of 24.03′ to a pin; thence continuing in a northerly direction along the right of way line of Church Street along a bearing of N 11◦03′50″ W a distance of 226.98′ to a pin, being the point of beginning.

Said Parcel A contains 53,282 sq.ft / 1.223 Acres

EXHIBIT A-2


PARCEL A
53,282 SQ.FT.
1.223 ACRES
PARCEL B
123,267 SQ.FT.
2.830 ACRES
CHURCH STREET (VAR. R/W)
CHASE STREET (40' R/W)
OKEEFE STREET
N1°03'50"W 226.98'
N77°36'26"E 425.01'
EXISTING DEED LINE (DB. 81, PG. 325)
S 71°27'58" E 1282.06' (04)
TOE OF SLOPE
GRAVEL COVERED ASPHALT AREA
ZONE X
551.26' S78°48'29"W
GPIN #1438328475
KENNEY & KENNEY, INC.
(INST. #010016330)
ZONING I-2
GPIN #1438321531
KENNEY & KENNEY, INC.
(INST. #010016330)
ZONING I-2
MATCHLINE (SEE SHEET 3)
PRELIMINARY
COMMONWEALTH OF VIRGINIA
RICHARD A. HYATT
LICENSED
LAND SURVEYOR
SHEET 2 OF 3
SUBDIVISION OF
CITY OF NORFOLK PROPERTY
AT CHURCH STREET
FOR
VIRGINIA SUPPORTIVE HOUSING
NORFOLK, VIRGINIA
SCALE: 1"=30'
DATE: JAN.24, 2014
Site Improvement Associates, Inc.
Civil Engineers, Surveyors, & Site Contractors
Where Engineering and Construction Come Together
800 Juniper Crescent, Suite A
Chesapeake, VA 23320
Office: 757-871-9060
Fax: 757-871-9288
SIA # 13158
30 15 0 30 60
scale feet