To the Honorable Council  
City of Norfolk, Virginia  

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

Subject: Land Disposition and Development Contract with Breeden Investment Properties  

Reviewed: Wynter C. Benda, Deputy City Manager  

Approved: Douglas L. Smith, Interim City Manager  

March 28, 2017  

I. **Recommendation:** Adopt Ordinance  

II. **Applicant:** Breeden Investment Properties, Inc.  
600 E. Ocean View Avenue and 719 E. Ocean View Avenue  
Norfolk, Virginia  

III. **Description:**  
This agenda item is to approve a Land Disposition and Development Contract ("LDDC") between the City of Norfolk (the "City") and Breeden Investment Properties ("Breeden") for the construction of a multi-story, multi-building apartment project.  

IV. **Analysis:**  
Breeden desires to construct a market rate multi-story, multi-building apartment project at 600 E. Ocean View Avenue, and the adjacent parcel at 719 E. Ocean View Avenue, the site of the former Ocean View Senior Center. The total acreage is approximately 6.38 acres. The project will consist of approximately 145 residential units, with related parking, recreation, and leasing/management office facilities.  

V. **Financial Impact:**  
The purchase price, as set forth in the LDDC, is $1,285,000.  

VI. **Environmental:**  
N/A  

VII. **Community Outreach/Notification:**  
Breeden is scheduling meetings with the six Civic League Presidents in the immediate project area. Also, public notification for this agenda item was conducted through the City’s agenda notification process.
VIII. **Board/Commission Action:**
Approval by Architectural Review Board and the Planning Commission required.

IX. **Coordination/Outreach:**
This letter and ordinance have been coordinated with the Department of Planning, Department of Utilities, Department of Public Works, Division of Transportation, City Attorney's Office and Department of Neighborhood Development.

Documentation provided by the City Attorney's Office:
- Ordinance
- LDDC
ORDINANCE No.

AN ORDINANCE APPROVING A LAND DISPOSITION AND DEVELOPMENT CONTRACT BETWEEN THE CITY OF NORFOLK, AS SELLER, AND BREEDEN INVESTMENT PROPERTIES, INC., AS PURCHASER, FOR REAL PROPERTY CONSISTING OF 6.38 ACRES, MORE OR LESS, AND LOCATED AT 600 E. OCEAN VIEW AVENUE AND 719 E. OCEAN VIEW AVENUE IN THE CITY OF NORFOLK.

WHEREAS, Breeden Investment Properties, Inc. ("Developer") desires to construct, furnish and equip a market rate, multi-story apartment project consisting of approximately 145 residential units, with related parking, recreation, and leasing/management office facilities (the "Project") on those certain parcels of real property owned by the City, including (i) the former Ocean View Senior Center property located at 600 E. Ocean View Avenue and (ii) the adjacent parcel consisting of approximately 2.403 acres and located at 719 E. Ocean View Avenue, including all buildings, structures and improvements thereon, which parcels include a total acreage of approximately 6.38 acres and are shown as "Parcel B" and "Parcel C" on the subdivision plat entitled "Resubdivision of Parcels A and A-1" attached as Exhibit A to the proposed Land Disposition and Development Contract attached hereto as Exhibit A. Parcel B and Parcel C are
collectively referred to herein as the "Property".

WHEREAS, the proposed Land Disposition and Development Contract provides for Developer's purchase of the Property and Developer's construction of the Project upon the terms and conditions set forth therein; now, therefore

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

Section 1:- That the Land Disposition and Development Contract (the "Contract") between the City of Norfolk, as seller, and Breeden Investment Properties, Inc. ("Developer"), as purchaser, a copy of which is attached hereto, wherein the City of Norfolk agrees to transfer to Developer all those certain parcels of real property consisting of 6.38 acres, more or less, and located at 600 E. Ocean View Avenue and 719 E. Ocean View Avenue as shown and described on Exhibit A of the Contract, and Developer agrees to construct and equip a market rate multi-story apartment project on the Property consisting of approximately 145 residential units, with related parking, recreation, and leasing/management office facilities, upon the terms and conditions set forth in the Contract, is hereby approved.

Section 2:- That the City Manager is authorized to correct, amend, or revise the Contract as he may deem necessary in order to carry out the intent of the Council and to execute the Contract, as corrected, amended, or revised in accordance herewith, for and on behalf of the City, subject however to approval as to form and correctness by the Office of the City Attorney.

Section 3:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.
LAND DISPOSITION AND DEVELOPMENT CONTRACT

BY AND BETWEEN

THE CITY OF NORFOLK, VIRGINIA

AND

BREEDEN INVESTMENT PROPERTIES, INC.

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LAND DISPOSITION AND DEVELOPMENT CONTRACT

THIS LAND DISPOSITION AND DEVELOPMENT CONTRACT ("Contract"), is made as of the ___ day of ______________, 2017, by and between the CITY OF NORFOLK, VIRGINIA ("City"), a municipal corporation of the Commonwealth of Virginia, and BREEDEN INVESTMENT PROPERTIES, INC., a Virginia corporation ("Developer"). The parties to this Contract may be referred to herein collectively as the “Parties” or individually as the “Party”.

RECITALS:

A. The City Council of the City of Norfolk desires to see a project of specific size, high quality design, and quality materials constructed by private developers on those certain parcels of real property owned by the City, including (i) the former Ocean View Senior Center property with an address of 600 E. Ocean View Avenue and (ii) the adjacent parcel consisting of approximately 2.403 acres with address of 719 E. Ocean View Avenue, including all buildings, structures and improvements thereon, which parcels include a total acreage of approximately 6.38 acres and are shown as “Parcel B” (“Parcel B”) and “Parcel C” (“Parcel C”) on the proposed resubdivision plat entitled “Resubdivision of Parcels A and A-1” attached hereto as Exhibit A (Parcel B and Parcel C are sometimes collectively referred to herein as the “Property”).

B. City and Developer desire to enter into an agreement to provide for the Developer to construct, furnish and equip a market rate multi-story, multi-building apartment project on the Property consisting of approximately 145 residential units, with related parking, recreation, and leasing/management office facilities (the “Project”). The Project is described in detail in Developer’s Proposal, as hereinafter defined, a copy of which is attached hereto, collectively, as Exhibit B, Exhibit B-1 and Exhibit B-2. In the event of a conflict between the
terms of this Contract and the terms of the Developer’s Proposal, the terms of this Contract shall
govern.

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:

**ARTICLE I**
**DEFINITIONS OF TERMS**

When used in this Contract with an initial capital letter or letters, each of the
following terms shall have the meaning set forth below.

(a) "Affiliate" of Developer means any legal entity, which controls, is controlled by,
or is under common control with another entity with the Developer and which is owned or
controlled by Ramon W. Breeden, Jr. and/or C. Torrey Breeden.

(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 established for Closing (hereinafter defined)
pursuant to Section 3.1 of this Contract.

(e) "Contractors" means the general contractors and subcontractors used by Developer
for construction of the Project.

(f) "Deposit" means the sum of Ten Thousand and 00/100 Dollars ($10,000.00) to be
paid by Developer to City within three (3) business days after Developer’s receipt of a fully
executed copy of this Contract from the City, together with, if applicable, the Closing Extension
Deposit (hereinafter defined). The Deposit shall be credited against the Purchase Price at Closing.
(g) "Developer’s Proposal” means, collectively, Developer’s letter of intent to the City dated January 12, 2017 for an approximately 145 unit market rate multi-level, multi-building apartment project, such proposal having been accepted by the City, along with the conceptual site plan for the Project attached hereto as Exhibit B-1 (the “Site Plan”) and the conceptual design plans for the Project attached hereto as Exhibit B-2.

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

(i) “Due Diligence Period” means the ninety (90) day period more fully described in Section 2.1.

(j) "Financing Commitment" means a commitment or commitments reasonably satisfactory to the City, which has or have been accepted by Developer from one or more equity investors or institutional lenders who are approved by the City, to finance the construction of the Project. The City’s 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 same form and level of detail typically utilized by a 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) “Outside Closing Date” means October 15, 2018, subject to extension in accordance with Section 3.1 below.
(l) "Purchase Price" means the sum of One Million Two Hundred Eighty-Five Thousand and 00/100 Dollars ($1,285,000.00).

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

(n) "Tree Preservation Easement" means an easement, for the benefit of the City, that generally requires the Developer to maintain and preserve the existing live oak trees that are located within Parcel C.

(o) "Unavoidable Delay" means a delay due to war, riots, civil commotion, strikes, labor disputes, embargoes, natural disaster, Acts of God, casualty events or any other cause or contingency similarly beyond the control of the Parties or the Contractors.

**ARTICLE II**

**AGREEMENT TO CONVEY AND DEVELOP PROPERTY**


The City will convey fee simple title to the Property to Developer 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, except for any Permitted Encumbrances, as hereinafter defined. Within thirty (30) days after the date of this Contract, Developer, at its expense, shall obtain a commitment for title insurance on the Property. Developer shall provide a copy of such title report/commitment to the City along with any objections thereto within fifteen (15) business days.
after Developer’s receipt of such report/commitment. The City shall have a reasonable time to cure any title defects which are not acceptable to Developer and/or its lender. Prior to Closing, Developer shall update the title report on the Property to be certain the only exceptions to the title at Closing are the Permitted Encumbrances. The foregoing notwithstanding, the City shall have the option of declining to cure any defect by providing written notice thereof to Developer within thirty (30) days after receipt of written notice of such defect and a copy of Developer’s title commitment, and, if the City does decline to cure any defect or does not cure any defect that it has agreed to cure, the Developer shall have the right to either waive its title objections and take title to the Property subject to such title defects, which shall then be considered Permitted Encumbrances, or terminate this Contract by giving written notice to City within five (5) days after the expiration of the Due Diligence Period and to receive the return of the Deposit as its exclusive remedy for termination of this Contract and any related claim. Developer will accept the Property from the City at Closing, subject to the terms and conditions hereinafter set forth. Except as expressly set forth in this Contract, Developer is accepting the use and conveyance of the Property "as is." Developer shall have ninety (90) days after the last date of execution of this Contract by either City and/or Developer, as evidenced by the dates set forth on the signature pages attached hereto, to obtain the necessary information, assessments, studies, and the like which are necessary to determine if Developer wants to acquire the Property and proceed with construction of the Project (the “Due Diligence Period”). In the event Developer determines the Property is unsuitable for constructing the Project, its sole remedy shall be return of its Deposit and termination of this Contract, which termination may be effected by Developer giving written notice thereof to the City within five (5) days after the expiration of the Due Diligence Period, as may be extended, in accordance with the terms hereof. Each Party shall be responsible for its costs of Closing. Title
to the Property will not be conveyed before, but may occur simultaneously with, the Developer’s
closing on the financing for the construction of the Project and the terms and the source of the
financing are acceptable to the City in accordance with the terms of this Contract.

Developer shall have the Due Diligence Period to have an environmental assessment, identification of utilities in, on or affecting the Property, and preliminary engineering and any other tests, studies or investigations done at Developer’s costs (the “Assessments”). In the event the Developer determines, based on the Assessments or based on any other reason whatsoever, that the Property is unsuitable for the Project, the Developer’s remedies are limited to termination of this Contract within five (5) days after the expiration of the Due Diligence Period, in which case the City shall promptly return the Deposit to Developer and, except as expressly set forth in this Contract, neither Party shall have any further rights or obligations hereunder. In no event will the Developer’s right to terminate this Contract based on the Assessments survive Closing. The City shall provide Developer with copies of documents pertaining to the Property, such as title reports or environmental assessment reports, if any, which were generated for the City at the time when City purchased the Property or from any prior contract purchaser of the Property that were provided to the City.

Developer shall be responsible for any demolition that Developer desires to do after Closing on the Property or as otherwise set forth in Section 4.7 below.

Section 2.2.  Restrictive Covenants.

The restrictive covenants contained in this Section 2.2 ("Restrictive Covenants") are intended and designed to operate as covenants binding upon Developer and its Affiliates and their successors and assigns. The Restrictive Covenants are intended for the benefit of the Property provided that (i) only the City and any successor or assignee of the City that is a local governmental
agency and (ii) the United States of America, with respect to Subsection 2.2(d), shall have the right, power and authority to enforce the Restrictive Covenants; and provided, further, that the City shall have the right, power and authority (without the necessity of obtaining the consent of Developer) to waive compliance by Developer with any of the Restrictive Covenants whenever it makes a determination, in its reasonable discretion, that such non-compliance or default does not materially interfere with the objectives of the City with regard to development. In addition to, but not in lieu of, any other right or remedy for breach of any one or more of the Restrictive Covenants, the City shall be entitled to seek injunctive relief, without necessarily showing monetary or special damages and without posting bond or security for a bond for the award of a permanent injunction. The violation of any of the Restrictive Covenants, and the exercise of any right or remedy for breach of any of the Restrictive Covenants, shall not destroy, impair or otherwise affect the lien of any recorded instrument given by Developer to secure repayment of a loan or loans made for the purpose of providing funds for improving the Property 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:

(a) The Property shall not be used for industrial purposes, with the exception of parking.

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

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

(d) Developer agrees, on its own behalf and on behalf of its successors and assigns, not to discriminate upon the basis of race, creed, color, religion, sex, national origin, disability or familial status in the sale, lease, rental, use or occupancy of the Property or any improvements thereon, including the Project. This covenant being given for the benefit of the public, the United States of America is expressly recognized as a beneficiary thereof and is entitled to enforce this covenant for its own benefit or that of the public.
(e) Any land area within the Property not occupied by structures, hard surfacing, or vehicular driveways shall be kept planted with grass, trees and plants and/or shrubbery and shall be maintained in a healthy condition and neat appearance. In the event of a default by Developer, its successors and/or assigns, in the planting and/or maintenance obligations set forth in this Section 2.2(e), which default continues for a period of thirty (30) days after receipt by Developer of written notice thereof from the City, the required planting and maintenance work may be completed by the City at the sole cost and expense of Developer, its successors and assigns, from time to time and in keeping with this covenant, and Developer shall reimburse City for the costs thereof within thirty (30) days after receipt of an invoice therefor.

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

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

(h) Any service area, service facility or mechanical equipment located on the side of the Project site which is adjacent to a public right-of-way shall be enclosed or adequately screened by landscaping or other materials otherwise consistent with the design of the Project.

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

(j) Gas, electric and other utility services within the Project shall be underground. No utility line or connection to any utility line at or above ground level shall be permitted within the boundary of the Property or in the public right-of-way immediately abutting the Property. For purposes of clarification, and without limiting the foregoing, as a part of the Project, Developer shall be obligated to relocate underground the existing above-ground utility lines that are on the utility poles in the Norfolk Avenue right-of-way adjacent to the Property, as well as the existing utility lines from East Ocean View Avenue that are on the utility poles that currently bisect the Property.

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

It is intended and agreed hereby that the Restrictive Covenants under this Section 2.2 shall be covenants running with the land and that they shall in any event, and without regard
to technical classification or designation, legal or otherwise be binding upon the City and Developer, and its successors and assigns, as the case may be.

Section 2.3. Title Insurance.

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

Section 2.4. Design of Project.

In accordance with Section 2.7 below, the design and materials of the Project shall be subject to review and approval by the City’s Design Review Committee and the City’s Planning Commission. The Project will consist of the buildings, facilities and elements described in Developer’s Proposal as revised in accordance with the terms of this Contract. The design of the Project and the construction materials used within the Project will be of at least the same quality as shown in the Developer’s Proposal and the design elements for the proposed apartment project known as “Pinewell Station” that was previously approved by the City’s Design Review Committee for the Property, and otherwise of at least the same quality as other first class multifamily residential projects approved by the City on property formerly owned by the City.

Developer shall submit the preliminary plans to the Planning Director (a) when the design is approximately 10% complete, (b) when the design is approximately 30% complete, (c) when the design is approximately 90% complete, and (d) when the design is sufficiently complete such that Developer’s contractor can proceed with construction (the “Final Plans”). The City shall review the design submissions for the Project in accordance with Section 2.7 of this Contract. Developer may not proceed with construction until the Final Plans for the Project are approved by the Planning Commission and, in order to enforce this Section 2.4, the City shall be entitled to seek injunctive relief without the necessity of showing monetary or special damages and without
posting bond or security for the award of a permanent injunction. The City’s review will include confirmation that the design at the 90% stage and the Final Plans are in substantial conformance with the previous plans provided or properly modified in accordance with this Contract. Notwithstanding the foregoing, upon prior written notice to the City setting forth in detail the changes to be made and the reasons therefor, Developer shall have the right to make changes in the design and construction of the Project to the extent required to meet applicable codes, rules, regulations, statutes and ordinances. Developer must also obtain all other approvals required by the Norfolk City Code and other applicable laws and regulations. If, prior to Closing, Developer, despite using commercially reasonable efforts, is unable to obtain approval by the City of the plans for the Project and all other governmental approvals and permits required to commence construction of the Project, Developer may terminate this Contract by giving the City written notice thereof prior to the Closing, in which event the City shall refund the Deposit to the Developer and, except as expressly set forth in this Contract, neither Party shall have any further rights or obligations under this Contract.

Section 2.5. Construction and Design of Parking.

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

Section 2.6. Relocation and Construction of Utilities.

Developer shall be responsible for confirming the existing water and sanitary sewer systems adjacent to or downstream of the Property are adequate to support the Project. Any water or sanitary sewer system upgrades necessary to support the Project shall be designed and constructed by the Developer at the Developer’s expense. The Developer shall be responsible for
the relocation of any utilities which is necessitated by the construction of the Project and for connecting to water, storm and sanitary sewer lines currently located in public rights of way, and all costs thereof shall be paid and borne by Developer. Connection fees and tap fees for such public utilities serving the Project will be Developer's responsibility. The cost of franchise utility services for the Project shall be the responsibility of Developer. In addition, Developer shall cause all electric, telephone and other utility lines that are within the boundaries of the Project or that are within public rights of way immediately adjacent to the Property to be placed underground either within the public right of way or within utility easements located within the Property lines.

Section 2.7. City's Review Procedures.

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

Section 2.8. Modifications of Design by Developer.

If Developer wishes to make modifications to the design of the Project after it has been approved by the City, Developer shall submit such proposed modifications to the City for review and approval. Any such submission shall clearly identify all changes, omissions and additions as compared to the previously approved Project design documents. If the City determines, in its reasonable judgment, that the proposed modifications are acceptable, the City shall so notify Developer, the Project design shall be deemed to incorporate the modifications that have been approved by the City, and Developer shall perform its obligations under this Contract in accordance with the Project design, as modified. If the City determines, in its reasonable judgment, that the proposed modifications are not acceptable, the City shall so notify Developer, specifying in reasonable detail in what respects such proposed modifications are not acceptable, and Developer shall either (a) withdraw the proposed modifications, in which case construction of the Project shall proceed on the basis of the Project design previously approved by the City, or (b) revise the proposed modifications in response to the City’s objections and resubmit such modifications to the City, within thirty (30) days after receipt of such notice of objections, for review and approval.
Section 2.9  Zoning.

If not previously applied for, within sixty (60) days after the full execution of this Contract by all Parties hereto, the Developer shall apply for the rezoning of the Property to a zoning classification and conceptual plan that permits the use of the Property as contemplated in the Developer's Proposal, including a layout of the Project as contemplated by the Site Plan and containing conditions acceptable to Developer in its sole discretion (the "Rezoning"). City staff shall assist Developer during the application process.

Section 2.10  Construction Schedule.

Developer shall commence construction of the Project on or before that date which is sixty (60) days after the later of (a) the Closing Date, or (b) the date of approval of the Final Plans by the City (the latter of which dates being the "Construction Commencement Deadline"). Developer shall provide written notice to the City of the date of the commencement of construction within five (5) business days after such commencement. Construction of the Project shall be Substantially Completed in a good and workmanlike manner in accordance with the Final Plans and a Certificate of Occupancy shall have been obtained by Developer no later than that date which is twenty-seven (27) months after the date of commencement of construction, subject only to extensions for Permitted Delays, as hereinafter defined (the "Construction Completion Deadline").

Full completion of all punch-list items, landscaping and similar design and development functions for the Project ("Final Completion") by Developer shall occur within two (2) months following Substantial Completion, subject to Unavoidable Delays. Construction shall be completed by Developer on such schedule as is reasonably required to achieve Substantial Completion prior to the Construction Completion Deadline. Accordingly, at or prior to submission of the plans for final approval by the City, a Development Timeline shall be furnished by
Developer to the City’s Director of Development for review and approval by the City, which approval will not be unreasonably withheld, conditioned or delayed.

Promptly after the execution and delivery of this Contract, Developer shall commence and diligently prosecute its due diligence investigations and studies related to the Property and the feasibility of the Project. Following the expiration of the Due Diligence Period, Developer shall commence and diligently prosecute any necessary applications, architectural and engineering work, negotiations, letting and execution, as the case may be, of construction, demolition, and utility relocations or abandonment, contracts or commitments, necessary or appropriate for the commencement of construction in accordance with the terms hereof.

Section 2.11. Financing Commitment.

Prior to Closing, Developer shall provide a Financing Commitment to the City, in form and substance satisfactory to the City, which approval by the City shall not be unreasonably withheld, conditioned or delayed, evidencing Developer’s financial ability to design, construct and equip the Project and thereafter to maintain, operate and lease the same in accordance with the standards set forth in this Contract. If the City is not satisfied with the Financing Commitment submitted by Developer, the City shall provide Developer with written notice of the reason or reasons why the Financing Commitment is unacceptable to the City.

Section 2.12. Failure to Meet Construction Schedule.

In the event that (a) Developer fails to commence construction of the Project by the Construction Commencement Deadline, or (b) once commenced, construction ceases for ninety (90) consecutive days (other than, in either case, because of a City Delay or a Permitted Delay), except if the Developer makes reasonable effort to recommence construction, then such ninety (90) day period will be extended to one hundred twenty (120) days, the City, shall be entitled, but
not obligated, to terminate this Contract upon thirty (30) days prior written notice to Developer and unless Developer cures such failure or recommences construction, as the case may be, within such thirty (30) day period, this Contract shall terminate except for the City’s remedies as outlined below. In the event a delay in construction of the Project is caused by a City Delay or an Unavoidable Delay, the Construction Commencement Deadline and/or the Construction Completion Deadline shall be extended but only by the number of days of delay caused by such City Delay and/or Unavoidable Delay; provided, however, there shall be no extension of the Construction Commencement Deadline and/or the Construction Completion Deadline unless, (x) within five (5) business days after the occurrence of any such City Delay and/or Unavoidable Delay, Developer provides written notice to the City of the occurrence of such City Delay and/or Unavoidable Delay, (y) within five (5) business days after conclusion of such City Delay and/or Unavoidable Delay, Developer provides an additional written notice to the City of the total number of days of such City Delay and/or Unavoidable Delay and of the adjusted Construction Commencement Deadline and/or Construction Completion Deadline, and (z) the City agrees to the date(s) of such adjusted Construction Commencement Deadline and/or the Construction Completion Deadline in writing, which agreement shall not be unreasonably withheld, conditioned or delayed. Any City Delay and/or Unavoidable Delay properly documented in accordance with the terms of this Section 2.12 shall be referred to herein as a “Permitted Delay,” and the terms “Construction Commencement Deadline” and “Construction Completion Deadline”, as used herein, shall be deemed to mean the Construction Commencement Deadline and/or Construction Completion Deadline, as adjusted by any Permitted Delays.

In the event this Contract is terminated by the City pursuant to this Section 2.12, the City shall have the right, but not the obligation, to re-enter and take title to the Property, in which event
Developer shall execute a deed re-conveying the Property as well as all improvements thereon to
the City, subject to any mortgage or deed of trust ("Mortgage") and other loan documents secured
by the Project and to which the Property is subject pursuant to the Financing Commitment and
further subject to any tenant leases already in place for premises at the Project; provided the City
shall contemporaneously pay Developer the Reverter Payment, as hereinafter defined, for the
Property in accordance with Section 8.2 of this Contract. In the event the City has the right to
terminate this Contract as provided in this Section 2.12, but does not exercise its right to terminate
and the Project is Substantially Completed on a date after the applicable Construction Completion
Deadline, then Developer shall pay liquidated damages to the City for such delay for each day
between the Construction Completion Deadline and the date the Project is Substantially
Completed. The amount of liquidated damages for each day of such delay shall be the difference
between real estate taxes that would be payable if the Project had been Substantially Completed
on the Construction Completion Deadline and the actual real estate taxes that are assessed for the
days between the Construction Completion Deadline and the date the Project is Substantially
Completed. Developer agrees this provision is a valid and enforceable liquidated damages
provision and the City’s Real Estate Assessor’s assessment of the amount owed by Developer as
liquidated damages shall be accepted by Developer as the proper amount. Notwithstanding
anything to the contrary in this Contract, upon Substantial Completion of the Project, the City’s
right of re-entry and re-conveyance of title as set forth above and in Section 8.2 herein shall lapse
and terminate.

Section 2.13. Risk of Loss and Insurance.

After Closing, the Developer shall bear the risk of loss on the Property and all
improvements thereon, including the Project. Developer agrees that in the event the Project is
partially or fully damaged or destroyed prior to Final Completion of the entire Project and subject to the Project’s lender allowing the use of insurance proceeds for reconstruction, Developer shall rebuild the Project at its costs, including the costs of design, construction and equipping same in accordance with the terms set forth herein. Failure to commence reconstruction within a reasonable time or failure to complete reconstruction on a construction schedule reasonably comparable to the construction schedule applicable to the initial construction of the Project shall entitle City, at the City’s option, to terminate this Contract and have the Property reconveyed to City on the terms described in Section 8.2 with respect to a default under Section 2.12(a).

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

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

**ARTICLE III**

**CLOSING AND PURCHASE PRICE**

Section 3.1. Time and Place of Closing.

The closing ("Closing") shall take place at the Office of the City Attorney, City Hall, 810 Union Street, Suite 900, Norfolk, Virginia 23510, or at such other location in Norfolk agreed to by the Parties, on a date mutually satisfactory to Developer and the City within thirty (30) days after the conditions to Closing set forth in Section 3.3 and Section 3.4 below are satisfied but in no event later than the Outside Closing Date. Time is of the essence. Notwithstanding anything to the contrary herein, if Developer is pursuing a Financing Commitment for a loan that will be insured by the United States Department of Housing and Urban Development ("HUD"), and despite Developer's diligent efforts HUD has not issued its final Financing Commitment for the Project by the Outside Closing Date, Developer shall have the right to extend the Outside Closing Date for a period not to exceed ninety (90) days (the "Closing Extension Period") by Developer providing written notice to the City before the Outside Closing Date that includes (a) reasonable documentation evidencing Developer's diligent efforts to obtain HUD's approval prior to the Outside Closing Date, and (b) an additional deposit of Seventy-Five Thousand and no/100 Dollars ($75,000.00) (the "Closing Extension Deposit"), which will be added to and become a part of the Deposit. The Closing Extension Period shall automatically expire, and Closing shall occur, upon the earlier to occur of (y) the expiration of the 90-day Closing Extension Period, or (b) as soon as reasonably practicable after HUD's issuance of the final Financing Commitment.
Section 3.2. Consideration.

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

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

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

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

(b) There shall be no material adverse change to the physical or environmental condition of the Property since the date of this Contract.

(c) No laws, statutes, ordinances, governmental orders, regulations, rules or requirements shall have been enacted, adopted, issued or otherwise promulgated, and/or shall be in force, that would prevent the use and development of the Project in accordance with this Contract, the zoning, or in accordance with any related agreements to which the City is a party or to which Developer is a party.

(d) The City shall own good and marketable fee simple title to the Property, and title to the Property must be insurable by an acceptable title insurance company without exception other than the Permitted Encumbrances.
(e) If not already completed, Parcel B and Parcel C shall have been subdivided by the City, at its expense, as separate legal parcels. The City shall use commercially reasonable efforts to cause the subdivision plat to be recorded prior to the expiration of the Due Diligence Period. The form and substance of the subdivision plat creating the Property shall have been reviewed and approved by Developer prior to the City’s submission or recordation thereof, which approval shall not be unreasonably withheld, conditioned or delayed.

(f) Site plan approval, a land disturbance permit and a building permit for the Project, and a Financing Commitment for the Project that has been approved by the City, shall have been obtained by Developer.

(g) Developer shall have obtained any other governmental authorizations, licenses, and permits necessary for the development of the Property in accordance with the approved site plan, except for those items which are administrative and cannot be obtained by Developer until after Closing.

(h) The Senior Center building located on the Property shall be abandoned and all personal property of the City shall have been removed therefrom. Any personal property remaining in the building as of the Closing Date shall be deemed abandoned by the City and may be disposed of or demolished by Developer in accordance with this Contract.

(i) The Rezoning shall have been approved by City Council for the City and all statutory appeal periods related thereto shall have expired without any appeals or challenges thereof, or, in the event of any such appeals or challenges, with such appeals or challenges having been resolved to Developer’s reasonable satisfaction.
Section 3.4. Conditions of City’s Obligation to Close.

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

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

(b) No laws, statutes, ordinances, governmental orders, regulations, rules or requirements shall have been enacted, adopted, issued or otherwise promulgated by a governmental entity or agency other than the City, and/or shall be in force, that would prevent the use and development of the Property in accordance with this Contract, the zoning, or in accordance with any related agreements to which the City is a party or to which Developer is a party.

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

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

(e) A certificate from the Virginia Board of Contractors or other evidence satisfactory to the City that the General Contractor selected by Developer to construct the Project is a registered contractor in good standing with the Virginia Board of Contractors.
(f) Such other documentation including plans and specifications, schematic drawings and renderings of the Project as may reasonably be requested by City to ensure the orderly development of the Property in accordance with the terms of this Contract.

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

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

(i) City shall have received a copy of Developer’s executed construction contract.

(j) City shall have received photocopies of any payment and performance bonds for the benefit of, and as may be required by, Developer’s lender.

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

Section 3.5. Failure to Satisfy Conditions.

If any condition of the obligation of a Party to close hereunder set forth in Section 3.3 and 3.4 shall remain unsatisfied and such condition has not been waived in writing by such Party on or prior to the Outside Closing Date (as extended in accordance with Section 3.1), this Contract shall terminate, in which event the Deposit shall be returned to Developer and neither Party shall have any further rights hereunder or obligations to the other of any nature hereunder or by reason hereof; provided, however, that with respect to a failure to satisfy any condition of the Closing that results from a Party’s default under this Contract, this Contract shall not terminate automatically upon the Outside Closing Date and the non-defaulting Party shall, instead, have the option either (a) to provide thirty (30) days’ written notice to the defaulting Party that unless,
during such thirty (30) day period, the non-defaulting Party opts to waive such unsatisfied condition, in writing, and to proceed to Closing hereunder, this Contract shall terminate or (b) to terminate this Contract immediately by written notice to the defaulting Party. 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 rights of termination set forth in (a) and (b) above.

Section 3.6. Deliveries at Closing by City.

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

(a) A special warranty deed conveying to the Developer good and marketable fee simple title to the Property free and clear of all liens and encumbrances except Permitted Encumbrances and subject to the Restrictive Covenants described in Section 2.2. “Permitted Encumbrances” shall mean all matters of record (except liens) that have not expired by time limitations contained therein or otherwise become ineffective or that were accepted by Developer pursuant to the provisions of Section 2.1 of this Contract;

(b) A certified copy of the ordinance adopted by the City authorizing the conveyance of the Property to Developer pursuant to the terms of this Contract;

(c) A deed of easement for the Tree Preservation Easement (the “Deed of Easement”), the form of which is attached hereto as Exhibit C;

(d) Any other document or instrument required hereunder or reasonably requested by Developer or its title insurance company in order to consummate the transactions contemplated herein; and
(c) Any subordination agreement reasonably required by Developer's lender to confirm that the City's right to reacquire the Property from Developer after the Closing for any reason under this Contract shall be subordinate, in all respects, to the rights of Developer's lender including, without limitation, those rights of such lender contained in any deed of trust, regulatory agreement and/or other instruments evidencing and securing the Developer's loan to construct the project that will be recorded contemporaneously with Closing.

Section 3.7. Deliveries at the Closing by Developer.

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

(a) Developer shall deliver to the City the Purchase Price minus the Deposit by wire transfer.

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

(c) Developer shall deliver to the City a counterpart copy of the Deed of Easement creating the Tree Preservation Easement over Parcel C.

(d) Developer shall deliver to the City the written opinion of counsel of Developer, in form reasonably satisfactory to the City (assuming that all signatures are genuine, and further assuming that all documents presented to such counsel as copies conform with the originals), stating (1) that Developer is a corporation, duly organized and validly existing under the laws of the Commonwealth of Virginia; (2) that Developer has the power to enter into the transactions contemplated by this Contract (including, without limitation, entry into this Contract); (3) that all actions by Developer required to be authorized in the transaction contemplated by this Contract have been duly authorized; (4) that this Contract and all documents required to effectuate
the transactions contemplated hereby which are to be executed by Developer (including, without limitation, all agreements and instruments to be executed by Developer at the Closing) have been duly executed and delivered by Developer, and constitute binding obligations of Developer, enforceable in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganizations, moratoriums or similar laws affecting the enforcement of creditors' rights generally and by legal and equitable limitation on the enforceability of specific remedies. If this Contract is assigned by Breeden Investment Properties, Inc. in accordance with Article IX below, then the deliverables set forth in this paragraph and in paragraph (d) below shall be automatically revised as appropriate so that the deliverables from Developer to the City are aligned with the applicable entity type (limited liability company, limited partnership, etc.) of the assignee hereof.

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

(f) Developer shall deliver to the City any other document or instrument required hereunder or reasonably requested by the City in order to consummate the transactions contemplated herein, which document or instrument will be in form and substance reasonably acceptable to the Developer and the City, including, without limitation, proof of insurance required by Section 2.13 hereof.

Section 3.8. Prorations.

Proratable items relating to the Property will be prorated as of the Closing Date.
Section 3.9.  Closing Costs.

City is exempt from grantor's tax on the Deed. Developer will pay all other recording taxes and fees in connection with the recordation of the Deed, the cost of its title insurance commitment and policy, the cost of obtaining the survey, and all other costs incurred in connection with its due diligence investigations of the Property. Each Party will pay its respective attorneys' fees.

ARTICLE IV
ADDITIONAL COVENANTS

Section 4.1.  Right of Entry.

Commencing upon the date of full execution of this Contract and continuing until the earlier of the termination of this Contract or Closing, Developer and its agents, representatives and contractors will have the right to enter the Property for the purpose of surveying the Property, conducting soil tests and engineering studies and performing such other examinations as Developer deems necessary to determine the suitability of the Property for its contemplated development. Developer will keep the Property free and clear of all mechanics' liens and will indemnify, defend and hold the City harmless from and against any and all claims, liens, liabilities, damages, losses and costs (including reasonable attorneys' fees) arising from the exercise by Developer of its right of entry under this Section 4.1. If the Closing does not occur, Developer will repair any damage to the Property caused by Developer's exercise of such right of entry at Developer's sole cost and expense.

Section 4.2  Survey.

Developer shall be responsible for securing a survey of the Property. Such survey shall be conducted by a surveyor acceptable to Developer and the City (with Timmons Group and
MidAtlantic Surveying and Land Design both being acceptable to the City), and shall be certified to Developer, the City, and the title company furnishing the title commitment to Developer.

Section 4.3. **Condemnation.**

If before the Closing all or any portion of the Property is taken under the power of eminent domain or is transferred in lieu of such taking and such taking or transfer materially interferes with Developer's contemplated development of the Property, Developer may, at its option, (i) terminate this Contract by notice to the City within thirty (30) days after Developer is notified of such taking or transfer, in which case return of the Deposit shall be the sole and exclusive remedy or (ii) proceed to Closing.

Section 4.4. **Time is of the Essence.**

Time is of the essence as to the performance of the terms and conditions of this Contract. To the extent any provisions of this Contract specifically state that time is of the essence, such specific provisions are not intended to mean that time is not of the essence as to the remaining provisions of this Contract.

Section 4.5. **Staging Area and Construction Operations.**

The City does not have any obligation to Developer and/or its contractor to provide a staging area or any particular construction easements for construction of the Project. Developer shall see that any pile driving is not started before 8:00 a.m. and cease by 6:00 p.m. on weekdays, and not started before 9:00 a.m. and cease before 5:00 p.m. on weekends and holidays.

Section 4.6. **Improvements to Community Beach Park.**

Developer acknowledges that Community Beach Park, which is a public park located across Ocean View Avenue from the Property (the “Park”), will have a positive impact on the success of the Project. Accordingly, Developer agrees to reimburse the City for up to, but not
to exceed, Seventy-Five Thousand and 00/100 Dollars ($75,000.00) for the costs incurred by the City to modernize and to make the restroom facilities and entrances to the restroom facilities at the Park compliant with the Americans with Disabilities Act (the “Restroom Facility Improvements”). The City shall complete the Restroom Facility Improvements prior to Developer achieving Substantial Completion of the Project. Developer shall make such reimbursement payments to the City by no later than, the later to occur of, (a) the Closing Date, or (b) the thirtieth (30th) day after Developer’s receipt of invoices from the City evidencing expenses incurred by the City in connection with the Restroom Facility Improvements. Developer shall have no obligation to make any payments under this Section 4.6 if the Closing does not occur; however, the provisions of this Section 4.6 shall survive the Closing and shall not be merged into the deed conveying the Property to Developer.

Section 4.7. Demolition; Improvements along Norfolk Avenue.

As a part of the Project, Developer, at its sole expense, shall demolish the Senior Center building and any other improvements that are located on the Property. The City, at its expense, shall cause the Senior Center building to be abandoned and all personal property removed therefrom by no later than Closing. In addition, Developer, at its sole cost and expense, shall integrate landscaping features, which may include a landscaped berm, along the western edge of the Property, parallel to Norfolk Avenue, in the approximate location as shown on the Site Plan, in order to diminish the full effect of automobile headlights shining into the property across Norfolk Avenue from any parking spaces that are located immediately adjacent to Norfolk Avenue within the Property (the “Norfolk Avenue Buffer”). The Norfolk Avenue Buffer shall be incorporated into the Project’s plans and are subject to the approval of the City in accordance with the provisions of this Contract.
Section 4.8. Maintenance of Parcel C.

The grass, trees, plants and shrubbery located within Parcel C shall be maintained by Developer in a healthy condition and neat appearance consistent with that of the remainder of the Project. Developer shall have the right, but shall not be obligated, to replace trees that die within Parcel C, and any trees that die may be removed by Developer after consultation with the City if recommended by a certified arborist. Additional landscaping and improvements may be installed by Developer within Parcel C as a part of the Project if approved by the City within the Final Plans. In the event of a default by Developer, its successors and/or assigns, in the maintenance obligations set forth in this Section 4.8, which default continues for a period of ten (10) business days after receipt by Developer, or its successor and assigns, of written notice thereof, the required maintenance work may be completed by the City at the sole cost and expense of Developer, its successors and assigns, from time to time and in keeping with this covenant, and Developer shall reimburse City for the costs thereof within thirty (30) days after receipt of an invoice therefor. Developer’s obligations under this Section 4.8 shall be included in the Deed of Easement entered into by the Parties at Closing. The obligations of Developer under this Section 4.8 shall expire forty (40) years after the date of this Contract.

Section 4.9. Sidewalks. The portions of the existing sidewalks along East Ocean View Avenue and Norfolk Avenue that immediately abut the Property require upgrade and/or reconstruction. Such upgrade and/or reconstruction shall be the responsibility of Developer, at Developer’s expense, to be completed during its development of the Project after Closing, in accordance with the specifications set forth in Exhibit D or, in the absence of such specification in Exhibit D, in accordance with the City’s standard specifications for sidewalks. Developer shall not be obligated to upgrade and/or construct any sidewalks on Chesapeake Avenue or any portion
of the sidewalks along East Ocean View Avenue and/or Norfolk Avenue that are beyond the perimeter of the boundaries of the Property as shown on the Site Plan.

ARTICLE V
PROGRESS REPORTS

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

ARTICLE 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.

ARTICLE VII
ADDITIONAL OBLIGATIONS

Section 7.1. Certificate of Compliance.

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

Section 7.2 Permits. At no cost to the City, City shall execute as owner, as may be required, all building permit applications, plans of development, utility permit applications, utility easements, and such other documents as may be reasonably required for Developer to obtain land disturbance and building permits for the Project. Developer agrees to indemnify, defend, and save City harmless from any liabilities resulting from incorrect information therein, unless such information was provided by City.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

Section 8.1 Default by Developer.

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

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

(b) The consent by Developer to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights;

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

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

Section 8.2. Remedies.

Upon the occurrence and continuance of any event of default described in Section 8.1 or any other breach of this Contract, City may elect to terminate this Contract by giving written notice of such termination to Developer, and this Contract shall terminate as of the date specified in such notice (which date shall be on or after the date of the notice of termination). In the event that termination under this Section 8.2 occurs after Closing, in addition to its other remedies, City may elect to reenter and take back title to the Property, in which event Developer shall immediately execute a deed re-conveying the Property as well as all improvements thereon to the City, subject to any Mortgage and any tenant leases already in place for premises at the Project and provided the City pays for the Property in accordance with the following paragraph of this Section 8.2. In addition to the remedies of termination described above, a non-defaulting Party shall have available to it all other rights and remedies provided in this Contract or at law or in equity. Remedies under this Contract shall be cumulative and not restrictive of other remedies. The prevailing Party in any action or proceeding to enforce the terms of this Contract shall be entitled to recover from the unsuccessful Party all costs and expenses, including reasonable attorneys' fees incurred therein.

In the event the termination is because of a default under Section 2.12 (a), the reconveyance of title of the Property to the City shall be subject to the City paying at the time of
such reconveyance the Purchase Price minus the Deposit. In the event the termination is because of a default under Section 2.12 (b), the reconveyance of title of the Property and all improvements thereon to the City shall be subject to the City paying, at the time of such conveyance, the Reverter Payment, as hereinafter defined. The "Reverter Payment" shall be (a) the sum of the Purchase Price and (b) an amount equal to ninety-five percent (95%) of the Fair Market Value, as hereinafter defined, as of the date of such notice of termination of all improvements constructed for the Project as of the termination 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 8.2, "Fair Market Value" shall mean the fair market value of the Property and improvements constructed for the Project as of the date of such of termination as determined by mutual agreement reached within twenty (20) days of the date of notice of termination by the City, or, in the absence of such agreement, by appraisal as follows. If the parties are unable to reach agreement on the Fair Market Value within such twenty (20) day period, then within ten (10) days thereafter Developer shall name one appraiser and the City shall name a second appraiser. The appraisers so chosen will meet within ten (10) days after the second appraiser is appointed and if, within thirty (30) days after the second appraiser is appointed, the two appraisers are not able to agree upon the Fair Market Value, they shall appoint a third appraiser. In the event the two appraisers are unable to agree upon such appointment within ten (10) days after the aforesaid time, then either Party may, as promptly as possible thereafter, request the American Arbitration Association to appoint a third appraiser. The decision of the appraisers so chosen shall be given within a period of thirty (30) days after the appointment of such third appraiser. The decision in which any two appraisers so appointed and acting hereunder concur shall in all cases be binding and conclusive upon the parties. Each Party shall pay the fees and expenses of the original
appraiser appointed by such Party and the expenses of the third appraiser, if any, shall be borne equally by the parties. Any appraiser, no matter by whom designated, shall be a member in good standing, with the "MAI" designation, of the Appraisal Institute with at least ten (10) years' experience as a real estate appraiser in the Hampton Roads, Virginia area. Notwithstanding anything to the contrary in this Contract, the City's right to take back the Property is and shall be subject and subordinate to the rights of Developer's lender and the lien of any Mortgage or regulatory agreement held by any lender for the financing of the Project and subject to tenant leases already in place for premises at the Project on the date of the notice, with copies of such leases to be provided to the City at the time of re-conveyance of the Property to the City. In addition to the remedies of termination described above, a non-defaulting Party shall have available to it all other rights and remedies provided in this Contract or at law or in equity. Remedies under this Contract shall be cumulative and not restrictive of other remedies. The prevailing Party in any action or proceeding to enforce the terms of this Contract shall be entitled to recover from the unsuccessful Party all costs and expenses, including reasonable attorneys' fees incurred therein.

For the avoidance of doubt, the City's right to elect to re-enter and take back title to the Property under this Section 8.2 and/or Section 2.12 after Closing is limited to the circumstances described in Section 2.12(a) or 2.12(b).

**ARTICLE IX
ASSIGNMENT LIMITATIONS**

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

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

**ARTICLE X**

**MISCELLANEOUS**

Section 10.1. **Low and Moderate Income and Resident Job Opportunities.**

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

Section 10.2. **No Broker.**

Developer and City each represent and warrant that no broker to whom a commission, fee or other compensation is payable is or has been involved in or brought about the transactions contemplated by this Contract other than S.L. Nusbaum Realty Co. ("Broker") who represents Developer. Developer shall be solely responsible for paying for any commissions due to Broker at Closing pursuant to a separate agreement between Developer and Broker. Each of said Parties shall indemnify and hold the others harmless from any and all claims, obligations,
liabilities, costs or expense (including reasonable attorneys' fees) incurred as a result of any claim for brokerage commissions, fees or other compensation by any person or entity who alleges having acted or dealt with the indemnifying Party in connection with the Project or the transactions contemplated by this Contract. Principals of Developer are licensed real estate brokers or agents. The Parties' obligations under this Section 10.2 shall survive the Closing and any termination of this Contract.

Section 10.3. Relationship of Parties.

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

Section 10.4. Negotiated Document.

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

Section 10.5. Governing Law.

This Contract shall be governed and construed in accordance with the laws of the Commonwealth of Virginia. In the event of any legal action arising out of this Contract, venue shall be in the Circuit Court of the City of Norfolk.

Section 10.6. Successors and Assigns.

The agreements, terms, covenants and conditions of this Contract shall be binding upon and inure to the benefit of the City, Developer, and except as otherwise provided herein, their respective successors and permitted assigns.
Section 10.7. **Further Assurances.**

Each Party hereto shall do all acts and things and make, execute and deliver such written instruments as shall from time to time be reasonably required to carry out the terms and provisions of this Contract.

Section 10.8. **No Amendment.**

Neither this Contract nor any provisions hereof may be changed, modified, amended, supplemented, altered, waived, discharged or terminated except by an instrument in writing signed by both Parties and if required by any mortgage document, with the written consent of the applicable lender.

Section 10.9. **Survival of Closing.**

The provisions of this Contract shall survive the Closing.

Section 10.10. **Effectiveness.**

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

Section 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.

Section 10.12. **Exhibits.**

Each Exhibit referred to in this Contract is incorporated by reference and attached to this Contract.
Section 10.13. Consent and Approvals.

(a) All consents and approvals which may be given under this Contract shall be in writing, as a condition of their effectiveness. The granting of any consent or approval by a Party to perform any act requiring consent or approval under the terms of this Contract or the failure on the part of a Party to object to any such action taken without the required consent or approval shall not be deemed a waiver by the Party whose consent was required or its right to require such consent or approval for any further similar act.

(b) If it is provided that a particular consent or approval is not to be unreasonably withheld, such consent or approval also shall not be unreasonably conditioned or delayed and any matter required to be done satisfactorily or to the satisfaction of a Party only be done reasonably satisfactorily or to the reasonable satisfaction of that Party.


For the purpose of construing this Contract, unless the context indicates otherwise, words in the singular number shall be deemed to include words in the plural number and vice versa, words in one gender shall be deemed to include words in other genders, and the word "person" shall be deemed to include a corporation or partnership. Headings of articles and sections are inserted only for convenience and are not, and shall not be deemed, a limitation on the scope of the particular articles or sections to which they refer.

Section 10.15. "Including".

In this Contract, whenever general words or terms are followed by the word "including" (or other forms of the word "include") and words of particular and specific meaning, the word "including without limitation," and the general words shall be construed in their widest
extent, and shall not be limited to persons or things of the same general kind or class as those specifically mentioned in the words of particular and specific meaning.

Section 10.16. Notices.

All notices or other communications required or desired to be given with respect to this Contract shall be in writing and shall be delivered by hand or by courier service, or sent by registered or certified mail, return receipt requested, bearing adequate postage and properly addressed as provided below. Each notice given by mail shall be deemed to be given by the sender when received or refused by the Party intended to receive such notice; each notice delivered by hand or by courier service shall be deemed to have been given and received when actually received by the Party intended to receive such notice or when such Party refuses to accept delivery of such notice. Upon a change of address by either Party, such Party shall give written notice of such change to the other Party in accordance with the foregoing. Inability to deliver because of changed address or status of which no notice was given shall be deemed to be receipt of the notice sent, effective as of the date such notice would otherwise have been received.

To City: City Manager
City of Norfolk
810 Union Street, Suite 1101
Norfolk, VA 23510

With a copy to: Director of Development
Department of Development
500 E. Main Street, Suite 1500
Norfolk, VA 23510

With a copy to: City Attorney
Office of the Norfolk City Attorney
810 Union Street, Suite 900
Norfolk, VA 23510
To Developer: Breeden Investment Properties, Inc.  
560 Lynnhaven Parkway  
Virginia Beach, VA 23452  
Attention: President

With a copy to: Gregory D. Lydon, Esq.  
Willcox & Savage, PC  
Wells Fargo Center, Suite 2200  
440 Monticello Avenue  
Norfolk, VA 23510

Section 10.17. Entire Agreement.

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

Section 10.18. 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. Scanned electronically delivered signatures shall constitute original signatures for purposes of this Contract.

Section 10.19. Recordation.

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

Section 10.20. Calculation of Time Periods.

Unless otherwise specified, in computing any period of time described in this Contract, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday under the laws of Virginia, in which event the period shall run
until the end of the next day which is neither a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5:00 p.m., Eastern time.

Section 10.21. City’s Project Representative. Upon the full execution of this Agreement, the City shall notify Developer of its representative for the Project who will be responsible for coordinating the City’s approvals hereunder. The City, upon further written notice, may change its designee.

(signature pages to follow)
WITNESS the following signatures:

CITY OF NORFOLK

By: ____________________________
    Douglas L. Smith, Interim City Manager

ATTEST:

____________________________
City Clerk

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

Sworn to and subscribed before me, a Notary Public in and for the City and Commonwealth aforesaid, by Douglas L. Smith, Interim City Manager, and R. Breckenridge Daughtrey, City Clerk of the City of Norfolk, this ______ day of __________________, 2017.

____________________________
Notary Public

My commission expires: _______________________

Approved as to contents:

____________________________
Director, Department of Development

Approved as to form and correctness:

____________________________
Assistant City Attorney
BREEDEN INVESTMENT PROPERTIES, INC.

By: ________________________________
Name: ______________________________
Title: ______________________________

COMMONWEALTH OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

Sworn to and subscribed before me, a Notary Public in and for the City and
Commonwealth aforesaid, by _____________________________, _____________________________ of
Breeden Investment Properties, Inc., this _______ day of ____________, 2017.

______________________________
Notary Public

My commission expires: ____________________________
EXHIBIT B

Developer’s Proposal
January 12, 2017

Mr. Chuck Rigney
Director of Development
City of Norfolk
500 East Main Street
Suite 1500
Norfolk, Virginia 23510

Re: Purchase by Breeden Investment Properties, Inc., or Assigns of an entitled multifamily parcel near the corner of Norfolk Avenue and East Ocean View Avenue for the purpose of constructing approximately 145 multifamily units.

Dear Chuck:

This letter is intended to outline the proposed business terms under which Breeden Investment Properties, Inc. or assigns, ("Purchaser") will acquire the approximately six (6) acre site shown as "Parcel B" on the proposed resubdivision plat entitled "Resubdivision of Parcels A and A-1" attached hereto as Exhibit "A" (the "Property"). The Property shall not include the portion of the Senior Center property shown on Exhibit A as "Parcel C."

Subject to the agreement to the business terms as outlined herein and the execution of mutually acceptable purchase and sale agreement (the "Purchase and Sale Agreement") and related documents, the proposed terms are:

1. Property.

The Property is described as The Pinewell Station Apartment site, together with all of Seller's interest in appurtenant easements across adjacent land that are necessary and required in order to provide water, sewer, storm drainage and other utilities necessary to service the Property.

2. Purchase Price.

The Purchase Price is One Million Two Hundred Eighty-Five Thousand and 00/100 Dollars ($1,285,000.00).

3. Use.

Purchaser shall construct an approximately 145 unit multifamily development on the Property.
4. Deposit.

An initial deposit of $10,000 to be held in escrow by BridgeTrust Title, LLC shall be applicable to Purchase Price and shall be refundable in the event the Agreement is terminated prior to expiration of the Study Period. If the Agreement is not terminated during the Study Period the $10,000 deposit shall become non-refundable, subject to Paragraph 5 below, Conditions Precedent to Purchaser’s Obligations.

5. Due Diligence.

Purchaser shall have a period of time beginning from the full execution of the Purchase and Sale Agreement and continuing thereafter for a period of ninety (90) days (the "Study Period") to conduct its due diligence review and inspection of the Property to determine the suitability of the Property for Purchaser's intended use and to review and inspect all environmental matters, title reports, surveys and to conduct such other studies and investigations as Purchaser may deem necessary in its sole discretion. Seller agrees to provide to Purchaser all engineering, environmental, market, soils and all other studies and reports it has in its possession relating to the Property. If closing does not occur, Purchaser shall return all studies, reports, appraisals, and surveys to Seller and shall provide to Seller at no cost to Seller, copies of any studies, reports, appraisals and surveys owned and in the possession of Purchaser in regard to the Property that Purchaser obtained during the Study Period.

If Purchaser determines that its inspections, investigations and the like are unacceptable or unsatisfactory in its sole discretion, the Purchaser may within five (5) days after the expiration date of the Study Period by written notice, terminate the Purchase and Sale Agreement and upon such termination, neither party shall have any further obligation to the other and the Purchaser's good faith deposit shall be refunded. Purchaser shall indemnify Seller against any claims and/or liens arising out of Purchaser's entry on the Property.

The Purchaser or Seller may extend the Study Period by up to sixty (60) days by providing written notice prior to the expiration of the Study Period and payment to the City of an additional Ten Thousand Dollars ($10,000) as a deposit to be held in escrow. In such event, the date of closing shall be delayed by a like amount but not the Outside Closing Date, as hereinafter defined.

6. Conditions Precedent to Purchaser's Obligations.

Purchaser’s obligations will be subject to the following:

(a) Title to the Property must be insurable by an acceptable title insurance company without exception other than matters approved by Purchaser during the Study Period.

(b) Seller’s representations and warranties made in the Purchase and Sale Agreement shall be true and correct as of the Closing Date and Seller shall have performed all of its obligations under the Purchase and Sale Agreement as of the Closing Date.

(c) Purchaser shall have a site development plan acceptable to the Purchaser in Purchaser's sole and absolute discretion conditionally approved by the City of Norfolk, Virginia for its intended use as an approximately 145 unit apartment development on the Property.

(d) Purchaser shall have obtained all governmental authorizations, licenses, and permits necessary for the development of the Property in accordance with the conditionally approved site development plan.
If any of the above conditions have not been satisfied or waived by Purchaser on or prior to closing, Purchaser shall have the right to terminate the Purchase and Sale Agreement and to receive the refund of its good faith deposit.

7. **Design Review.**

The project shall be subject to review and approval by the City’s Architectural Review Board.

8. **Utilities.** Purchaser shall be responsible for confirming the existing water and sanitary sewer systems adjacent to or downstream of the Property are adequate to support the proposed development. Any water or sanitary sewer system upgrades necessary to support the development shall be designed and constructed by the Purchaser at the Purchaser’s expense. The Purchaser shall be responsible for the relocation of any utilities which is necessitated by the construction of the project and for connecting to water, storm and sanitary sewer lines currently located in public rights of way, and all costs thereof shall be paid and borne by Purchaser. Connection fees and tap fees for such city utilities serving the project will be Purchaser’s responsibility. The cost of franchise utility services for the project shall be the responsibility of Purchaser. In addition, Purchaser 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.

9. **Community Beach Park.**

Purchaser agrees to reimburse the Seller for up to Seventy-Five Thousand and 00/100 Dollars ($75,000.00) for the costs incurred by the City to make improvements to the facilities at Community Beach Park. Purchaser shall make such reimbursement payments to the Seller within thirty (30) days after receipt of invoices evidencing expenses incurred by the Seller in connection with the improvements.

10. **City Property Along Norfolk Avenue.**

The grass, trees, plants and shrubbery located within the parcel owned by the City and shown as Parcel C on Exhibit A shall be maintained by Purchaser. The City shall have the right to make alterations to and to use Parcel C in its sole and absolute discretion. Upon the request of the Seller, Purchaser shall construct a retaining wall along Norfolk Avenue at Purchaser’s sole cost and expense. The plans and specifications for the retaining wall shall be subject to the prior written approval of the Seller.

11. **Easement.** Purchaser shall be granted an easement for ingress and egress over the front portion of the parcel identified as Parcel C in Exhibit A (the “Access Easement”). Purchaser shall be solely responsible for the maintenance, upkeep, repair, and replacement of its improvements in the Access Easement.

12. **Closing.**

The closing shall be thirty (30) days after all Conditions Precedent to Purchaser’s Obligations, as outlined in Paragraph 5, have been satisfied or waived by Purchaser but in no event later than November 17, 2017 (the “Outside Closing Date”).

With respect to closing of the purchase of the Property, each party shall pay its own attorney's fees. The Seller will pay any Grantor's tax due on the deed and the Purchaser will pay all recording taxes and fees with regard to the deed.

14. Definitive Agreement.

This letter of intent is not intended to be a legally binding agreement, but represents the intention of both parties to pursue negotiations towards a definitive Purchase and Sale Agreement. There will be no legally binding agreement with regard to the sale of the Property unless and until a mutually acceptable Purchase and Sale Agreement is fully executed by all parties, which must be executed on or before March 31, 2017.

The definitive Purchase and Sale Agreement will contain customary representations and warranties with respect to the Property including title, Seller's authority, no other approvals necessary, no outstanding agreements regarding sale or occupancy, no known environmental problems, no roll back taxes, no binding obligations to municipal or state authorities except for those which are standard in the City's development agreements, and no knowledge of condemnation.

15. Default Remedies.

Purchaser will have a right to specific performance, and to recover its out of pocket expenses supported by invoices, in the event of Seller's default.

16. Purchaser.

Breeden Investment Properties, Inc. will have the right to assign a Purchase and Sale Agreement to any related partnership, corporation or limited liability company in which Ramon W. Breeden, Jr. has a controlling interest with the prior consent of the Seller which consent shall not be unreasonably withheld. Upon such assignment and assumption by such assignee, Breeden Investment Properties, Inc. shall not have any further obligation under the Purchase and Sale Agreement.

17. Real Estate Broker.

Ramon W. Breeden, Jr. is a licensed real estate broker in the Commonwealth of Virginia.


Purchaser shall pay any commission, fee, or other compensation payable as a result of the transaction contemplated in this letter agreement. Seller represents and warrants that no broker to whom a commission, fee or other compensation is payable is or has been involved in or brought about the transactions contemplated by this letter agreement. Seller and Purchaser shall indemnify and hold each other harmless from any claims to commissions, costs and other fees or other expenses arising out of or in any way connected with any asserted agency or cooperative relationship with the indemnitor and relating to this agreement or the purchase and sale of the Property.

Purchaser's offer to enter into this agreement is to exist only until January 16, 2017. Unless this agreement is signed by Seller and returned to Purchaser by 4:00 p.m. on January 16, 2017 then Purchaser's offer to enter into this agreement shall be null and void at the Purchaser's option.
If the above terms are acceptable to you, please sign and return a copy of the letter to me.

Should you have any questions, do not hesitate to contact me.

Sincerely,

BREEDEN INVESTMENT PROPERTIES, INC.

Timothy A. Faulkner
Vice President

TAF:dw

Accepted and Agreed to:

17th Day of January, 2017

By Seller:

CITY OF NORFOLK

By: Douglas A. Smith
Name: Douglas A. Smith
Title: Interim City Manager

ATTEST:

City Clerk

Approved as to Form and Correctness:

Assistant City Attorney

cc: Ramon W. Breeden, Jr.
    C. Torrey Breeden
    Terry M. Marshall
EXHIBIT B-1

Conceptual Site Plan
EXHIBIT C

Form of Tree Preservation Easement
THIS TREE PRESERVATION AND MAINTENANCE AGREEMENT (this "Agreement") is made as of the ___ day of ____________, 20___ by and among ____________________________, a ___________________ ("Developer"), to be indexed as a Grantor, and the CITY OF NORFOLK, VIRGINIA, a municipal corporation of the Commonwealth of Virginia (the "City"), to be indexed as a Grantee.

RECITALS:

A. Developer is the owner of that certain parcel known as "Parcel C" ("Parcel C") as shown on the plat entitled "RESUBDIVISION OF PARCELS A AND A-1 NORFOLK, VIRGINIA" prepared by MidAtlantic Surveying — Land Design dated May ____, 2016 and recorded in the Clerk’s Office of the Circuit Court of the City of Norfolk, Virginia (the "Clerk’s Office") in ____________________________, which land Developer acquired by Deed from the City (the "Deed"), which Deed is recorded in the Clerk’s Office immediately preceding this Agreement.

B. Developer hereby desires to subject portions of Parcel C to the provisions of this Agreement in order to provide for the on-going care and preservation of certain existing live oak trees that are located on Parcel C, and for such other purposes as more particularly set forth in this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, Developer hereby establishes the following easements, covenants and terms for the benefit of the City as provided herein:

1. Tree Preservation Covenant. Developer hereby covenants with the City that the Developer, at its sole cost and expense, will use commercially reasonable efforts to maintain and preserve the live oak trees that are in existence on the date of this Agreement and that are located within the portion of Parcel C identified as ____________________________ on the plat attached hereto as Exhibit A (the "Existing Live Oak Trees").
2. **Landsaping Maintenance Covenant.** In addition to the Existing Live Oak Trees, the grass, plants and shrubbery located within Parcel C shall be maintained by Developer in a healthy condition and neat appearance consistent with that of the apartment project being developed by Developer on adjacent property conveyed by the City to Developer within the Deed (the "Apartment Project").

3. **Replacement of Trees.** Developer shall have the right, but shall not be obligated, to replace any of the Existing Live Oak Trees that die, and any of the Existing Live Oak Trees that die may be removed by Developer after consultation with the City if removal is recommended by a certified arborist.

4. **Additional Improvements.** Developer shall have the right to construct additional landscaping, signage, utilities, sidewalks, berms, gates and other improvements within Parcel C as a part of its development of the Apartment Project if such improvements are contained within the plans and specifications for the Apartment Project that are approved by the City. Any improvements constructed by Developer on Parcel C shall be maintained by Developer in a good condition and repair. Notwithstanding anything to the contrary herein, Developer shall be prohibited from constructing any buildings within Parcel C.

5. **Default and Easement.** If Developer, its successors and/or assigns, fails to perform the maintenance obligations set forth in this Agreement, which default continues for a period of ten (10) business days after receipt by Developer, or its successor and assigns, of written notice thereof, the required maintenance work may be completed by the City at the sole cost and expense of Developer, its successors and assigns, from time to time, and Developer shall reimburse City for the costs thereof within thirty (30) days after receipt of an invoice therefor. In furtherance of the foregoing, Developer hereby grants and conveys to the City a non-exclusive easement to allow the City to enter upon Parcel C for the purpose of completing the maintenance obligations of Developer upon its failure to do so in accordance with the City’s self-help rights set forth in this paragraph.

6. **Term of Agreement.** This Agreement, and all of the easements and obligations contained in this Agreement, shall automatically expire and terminate on ________, 20____ [NOTE: INSERT DATE 40 YEARS AFTER DATE OF LDDC]. Upon the expiration of this Agreement, no further documentation shall be required from either party to evidence the automatic termination of the obligations and vacation of the easement rights contained herein.

7. **No Rights in Public; No Implied Easements.** Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of Parcel C. No easements shall be implied by this Agreement.

8. **Miscellaneous.**

   (a) **Amendments.** No amendment to this Agreement shall become effective except when signed by both the City and the Developer. Such amendment shall be recorded in the Clerk’s Office.
(b) **Estoppel Certificates.** Upon receipt of written notice from Developer, the City shall, within ten (10) business days thereafter, provide an estoppel certificate to Developer confirming whether Developer is in compliance with the terms of this Agreement, or if Developer is not then in compliance, specifying the nature of any such non-compliance.

(c) **No Agency; No Third-Party Beneficiary.** Nothing in this Agreement shall be deemed or construed by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the City and Developer. No rights, privileges or immunities of the City shall inure to the benefit of any third party, nor shall any third party be deemed to be a third-party beneficiary of any of the provisions contained herein.

(d) **Covenants to Run with Land.** It is intended that each of the easements, covenants, rights and obligations set forth herein shall run with the title to Parcel C, shall bind every person having any interest therein and shall inure to the benefit of the City. The obligations of Developer contained in this Agreement are not personal to Developer, but shall be and remain the obligation of the owner of Parcel C from time to time, and upon the sale, transfer or conveyance of Parcel C, the prior owner of Parcel C shall have no further liability for any obligations arising under this Agreement from and after the effective date of such sale, transfer or conveyance.

(e) **Severability.** Each provision of this Agreement is hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement.

(f) **Notices.** All notices, demands, or other communications that may be necessary or proper hereunder shall be in writing and shall be deemed to be delivered: (i) when received, if delivered by hand; (ii) one (1) business day after deposit with a nationally recognized overnight courier service (costs prepaid); or (iii) three (3) business days following deposit of same in a U.S. Postal Service receptacle, if sent by mail, postage prepaid, as certified mail, return receipt requested, in each case addressed to either (A) Developer at 560 Lynnhaven Parkway, Virginia Beach, Virginia 23452, or (B) the City at 810 Union Street, Suite 1101, Norfolk, Virginia 23510; or at such other address as the Developer or the City may hereafter designate in writing by notice to the other party hereto.

(g) **Governing Law.** The laws of the Commonwealth of Virginia shall govern the interpretation, validity, performance, and enforcement of this Agreement.

(h) **Headings.** The headings of the sections and paragraphs of this Agreement are for convenience only and do not in any way limit, amplify or otherwise affect the provisions contained herein.

(i) **Execution by Counterpart.** This Agreement may be executed in as many counterparts as may be required; and it shall not be necessary that the signature of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each
counterpart; but it shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on one or more of such counterparts. All counterparts shall collectively constitute a single document.

[Signature pages follow.]
IN WITNESS WHEREOF, the Developer has executed this Agreement as of the date first written above.

DEVELOPER:

__________________________,
a __________________________

By: __________________________
Print Name: ____________________
Title: __________________________

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF __________________, to-wit:

The foregoing instrument was acknowledged before me this ___ day of __________, 20___ by __________________ as _______________ of __________________, a ____________________________, on behalf of the company.

________________________
NOTARY PUBLIC

My commission expires: ________________
Registration No.: _____________________
IN WITNESS WHEREOF, the City has executed this Agreement as of the date first written above.

CITY:

CITY OF NORFOLK, VIRGINIA

By: ______________________ (SEAL)
   City Manager

ATTEST:

City Clerk

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that ______________________, City Manager and ______________________, City Clerk, respectively, of the City of Norfolk, Virginia, whose names are signed to the foregoing Deed, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this ______ day of _____________________, ______.

________________________________
NOTARY PUBLIC

My commission expires: ____________
Registration No.: __________________

APPROVED AS TO CONTENTS:

________________________________
Director, Department of Development

APPROVED AS TO FORM AND CORRECTNESS:

________________________________
Assistant City Attorney
EXHIBIT A

Plat

[Attached hereto]