To the Honorable Council  
City of Norfolk, Virginia  

From: Darrell R. Crittendon, Director  
Recreation, Parks & Open Space  

Reviewed: Wynter C. Benda, Chief Deputy City Manager  

Approved: Douglas J. Smith, City Manager  

Subject: Lease Agreement for City Playground at Blocker YMCA  
Ward/Superward: 2/6  
Item Number: R-09  

August 28, 2018  

I. Recommendation: Adopt Ordinance  

II. Applicant:  
City of Norfolk  

III. Description:  
This agenda item is an ordinance to authorize the City of Norfolk (the “City”) enter in to a lease agreement with the Blocker YMCA, and a Subordination Agreement, to allow the City to install and maintain a public playground on private property at 312 W. Bute Street with an initial term of ten (10) years beginning on September 1, 2018 and with two additional ten (10) year renewals.  

IV. Analysis  
To fill a recognized need for a public playground for families in the downtown area, Recreation, Parks & Open Space (“RPOS”) worked with the Freemason Civic League, the Parks & Recreation Commission, and the City Attorney’s Office to come up with several locations that would be convenient and provide a positive impact to the community. It became apparent that the Blocker YMCA was an ideal location as it is already a family-oriented space located within a walkable community.  

V. Financial Impact  
The public playground will cost $80,000 to install. These funds are available and recognized within the FY 2019 RPOS CIP budget. There is nominal projected maintenance due to the utilization of dual pour rubber safety surfacing.
VI. Environmental
N/A

VII. Community Outreach/Notification
Recreation, Parks & Open Space coordinated and worked with the Freemason Civic League, the Parks & Recreation Commission, and the City Attorney's Office to ascertain a location that would provide the greatest benefit to families in the downtown area. Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. Board/Commission Action
This project is supported by the City of Norfolk Parks & Recreation Commission.

IX. Coordination/Outreach
This letter and ordinance have been coordinated with the Department of Recreation, Parks & Open Space, City Attorney's Office, Norfolk Parks & Recreation Commission, and the Freemason Civic League.

Supporting Material from the Department of Recreation, Parks & Open Space:
- Ordinance
- Deed of Lease
- Subordination Agreement
- Site Plan

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

Section 1:- That the Lease Agreement ("Agreement") between the Young Men’s Christian Association of South Hampton Roads ("YMCA"), as Lessor, and the City of Norfolk ("City"), as Lessee, a copy of which is attached hereto as Exhibit A, by which the City leases from the YMCA that a portion of that certain property located at 312 W. Bute Street for use as a playground, is hereby approved.

Section 2:- That the related Subordination Agreement ("Subordination") Agreement between the City, YMCA and TBVAT, LLC, a copy of which is attached hereto as Exhibit B, is hereby approved.

Section 3:- That the City Manager, and other proper officers of the City, are authorized to execute the Agreement and Subordination on behalf of the City, and to do all things necessary and proper to carry out the terms of the Agreement and Subordination.

Section 4:- That the City Manager is authorized to make any necessary corrections, revisions, or amendments to the Agreement and the Subordination, with the advice and counsel of the City Attorney, as he may deem advisable in order to carry out the intent of the Council as expressed in this ordinance.

Section 5:- That this ordinance shall be in effect from and after the date of its adoption.
DEED OF LEASE
(Community Playground)

THIS DEED OF LEASE ("Lease"), effective as of ___________ 2018, is by and between the YOUNG MEN'S CHRISTIAN ASSOCIATION OF HAMPTON ROADS, a Virginia nonprofit corporation ("YMCA") and the CITY OF NORFOLK, VIRGINIA, a municipal corporation of the Commonwealth of Virginia ("City").

A. The YMCA is the owner of certain real property located at 312 W. Bute Street in Norfolk on which is located the Blocker Family YMCA ("Property").

B. The City operates recreational facilities, parks and other activities for the citizens, residents and visitors of the City.

C. The City desires to establish and maintain a community youth playground on a portion of the YMCA Property ("Playground"), being more particularly described in Exhibit A attached hereto, and to establish pedestrian access to the Playground ("Pedestrian Access") across the Property, all of which is shown on Exhibit B attached hereto.

D. The YMCA has agreed to lease the Playground to the City, and the City has agreed to lease the Playground from the YMCA, with the mutual goal of ensuring the continued availability of the Playground to the citizens, residents and visitors of the City.

IN CONSIDERATION of the mutual covenants contained herein, and for other good, valuable and sufficient consideration, the receipt of which is hereby acknowledged by and between the parties hereto, the parties hereby agree as follows:

GRANT

1.1. LEASED PLAYGROUND. The YMCA by this deed hereby demises and leases the Playground to the City, and the City hereby takes and leases the Playground from the YMCA.

1.2. ACCEPTANCE OF PLAYGROUND. At the commencement of the Term (as defined in Section 2.1 hereafter), the City shall accept the Playground in its existing condition. No representation, statement, or warranty, express or implied, has been made by or on behalf of the YMCA as to condition, or as to the use that may be made of such Playground. In no event shall the YMCA be liable for any defect in such property or for any limitation on its use.

1.3. ACCESS AND PARKING. The YMCA will give users access to the Playground through the Pedestrian Access. The YMCA has designated a particular route to be taken across the Property for this purpose, such route being reflected on Exhibit B, but reserves the right to designate an alternate route of access to the Playground if either temporary or permanent changes to the Property or the improvements thereon become necessary. The YMCA does not provide users
of the Playground use of any parking spaces on the Property. Users may use on-street parking or available public parking garages or lots for parking when using the Playground.

TERM

2.1. INITIAL TERM. The term of this Lease shall commence at 8:00 AM ET on September 1, 2018, or as soon thereafter as approved by City Council of the City, and shall end at 11:59 PM ET on August 31, 2028, unless sooner terminated as herein provided ("Term").

2.2. OPTION TO RENEW. This Lease shall be automatically renewed for up to a maximum of two (2) additional terms of ten (10) years each, upon the same terms and conditions as the initial Term of this Lease, unless the City gives to the YMCA written notice of termination at least sixty (60) days prior to the end of the then current term.

2.3. HOLDOVER BY THE CITY. Should the City hold over and remain in possession of the Playground after the expiration of this Lease, it shall not be deemed to be a renewal or extension of this Lease, but shall only operate to create a month to month tenancy which may be terminated upon thirty (30) days' prior written notice by YMCA to the City.

RENT

3.1. NO RENT. The YMCA has agreed to lease the Playground to the City at no charge, therefore there shall be no rent due or payable by the City for the initial Term of this Lease or for any subsequent term of the Lease.

CONDUCT OF BUSINESS BY THE CITY

4.1. USE OF PLAYGROUND. The City shall use the Playground solely as a community youth playground for its citizens, residents and visitors, together with all related and ancillary uses as may be agreed in writing by the YMCA and the City. The City shall not knowingly permit any part of the Playground to be used for any unlawful purpose.

4.2. COMPETITIONS OR EVENTS. The City agrees that it will not sponsor or sanction the use of the Playground for competitions, tournaments or events that will cause a high demand for parking spaces without prior written agreement with, or permission by, the YMCA. Such agreement or permission will not be unreasonably withheld by the YMCA.

4.3. WASTE OR NUISANCE. The City shall not permit any nuisance or waste upon the Playground. The City recognizes that the YMCA will be operating a family YMCA on the Property and agrees that it will not allow the Playground to be operated in a manner that will interfere with the normal operations of its family center or that will impair the ability of the YMCA to provide its members a clean and safe environment.
4.4. **NO HAZARDOUS SUBSTANCES.** The term Hazardous Substances as used herein shall include any substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority having jurisdiction. City shall not cause or permit its agents, licensees or employees to use, generate, release, manufacture, produce, process, store, or dispose of any hazardous substance on or from the Playground or the Property. Hazardous Substances shall not include any materials kept on the Playground in limited quantities necessary for the operation or maintenance of equipment thereon. City shall be responsible for payment of all damages, fines, judgments, penalties, costs, liabilities, or losses arising during or after the Term of this Lease, and any extensions thereto, from or in connection with the presence of any Hazardous Substances in or on the Playground and the Property to the extent such Hazardous Substances are present due to the negligent acts or omissions of City, its employees, agents, or contractors.

4.5. **TAXES.** In the event property taxes are assessed against the Property, the YMCA and the City will each pay its proportionate share of such tax based on the percentage of the Property leased to the City for the Playground and the percentage of the Property used by the YMCA. If property taxes are ever assessed solely against the Playground, the City will be responsible for payment of those taxes.

**ALTERATIONS AND IMPROVEMENTS**

5.1. **CONSTRUCTION BY THE CITY.** The Playground is in an undeveloped state as of the commencement of this Lease. All equipment to be installed at the Playground will be at the sole cost of the City, and the equipment itself and the installation thereof will be in compliance with all local, state and federal laws, regulations and requirements with regard to its intended use by children, including those of the Consumer Product Safety Council and the National Playground Safety Institute. All such installed equipment shall remain property of the City at the expiration or earlier termination of this Lease and shall be removed from the Property at City’s sole expense.

5.2. **ALTERATIONS BY THE CITY.** Subject to prior notification to the YMCA, the City shall have the right to make alterations, additions or improvements to the Playground that are consistent with its use for youth playground purposes. Any other alterations, additions or improvements to the Playground shall require the advance written consent of the YMCA in each instance, which consent shall not be unreasonably withheld. All approved alterations, additions or improvements shall be at the sole cost and expense of the City. All alterations, additions, or improvements made to the Playground, with the exception of any installed equipment, as referenced in Section 5.1 above, shall belong to the YMCA at the expiration or earlier termination of this Lease; or, alternatively, the YMCA may require the City to remove them at City’s sole expense at the expiration or earlier termination of this Lease.

5.3. **REPAIRS AND MAINTENANCE BY THE CITY.** The City shall, at the City’s own cost and expense, keep and maintain the Playground and appurtenances thereto (including replacements as necessary) and every part thereof, in good order and repair.
5.4. **SIGNAGE.** Any identification, advertising, instructional, warning and caution signage erected and maintained by the City on the Playground shall be solely at the City’s cost and expense, and shall comply with applicable zoning requirements. All signage for the Playground shall require the advance written consent of the YMCA in each instance, which consent shall not be unreasonably withheld.

5.5. **INDEMNITY FROM LIENS.** City agrees that it will, at all times during the Term of this Lease, take any and all steps necessary to prevent the filing of mechanic’s liens against the Property. In no event shall YMCA or any of YMCA’s property be liable for or chargeable with any expense or lien for work, labor or materials used for and in the Playground; or for any improvements thereof or changes made upon the order of City, or to discharge the obligations of City during the Term of this Lease. YMCA agrees to the same obligations towards City as to any liens or charges or expenses made upon order of YMCA.

**UTILITIES AND SERVICES**

6.1. **UTILITIES AND SERVICES.** The City shall pay for all utilities and services furnished to the Playground under separate meter, and shall be responsible for any liability or damages on such account. In addition, the City shall be responsible for any damage or disruption to the Property caused by installation, removal, repair, maintenance or upgrading of any utility services, pipes, etc. serving the Playground.

**INDEMNITY**

7.1. **INDEMNIFICATION OF THE YMCA.** Pursuant to Virginia Code § 29.1-509 with respect to all recreational uses, the City shall, to the extent required by law, indemnify the YMCA and save the YMCA harmless from and against any and all claims, demands, actions, lawsuits, damages, liability and expense (including all reasonable attorney’s fees of the YMCA) in connection with loss of life, personal injury, and/or damage to the Property arising out of the occupancy, condition, use or non-use by the City of the Playground or any part thereof including, but not limited to, any means of ingress and egress thereto by the City, its citizens, residents and visitors, or occasioned wholly or in part by any act or omission of the City, its agents, contractors, employees, servants, lessees or concessionaires, unless such claims, actions, damages, liability and expense arise from the willful and/or grossly negligent actions of the YMCA. If any action, lawsuit or proceeding is brought against the YMCA by reason of any occurrence herein described, the City will, at its own expense, defend such action, lawsuit or proceeding with counsel that City shall have the right to choose and who is reasonably acceptable to YMCA.

**INSURANCE**

8.1. **SELF INSURED AND INSURANCE.** The parties acknowledge that City is self-insured. City shall have the right to satisfy any or all insurance requirements by use of self-insurance. If available, the City, at its sole expense and discretion, may keep the Playground insured using commercial insurance throughout the Term of this Lease against claims for personal
injury or property damage, under terms and provisions satisfactory to the City and to the YMCA in their reasonable discretion. In all such policies of insurance, the YMCA will be named as an additional insured, and such insurance obtained by the City shall provide that for all covered occurrences/risks, it will be the primary insurance with no contribution required by or expected from any insurance procured by the YMCA. The City shall have the sole and exclusive right and discretion to determine whether liability insurance is available at a cost which is reasonable and whether any such insurance should be obtained by the City.

8.2. LOSS AND DAMAGE. The YMCA shall not be liable for any damage to property of the City or of others located on the Playground, or for the loss of or damage to any property of the City or of others by theft or otherwise. The YMCA shall not be liable for any injury or damage to persons or property resulting from fire, explosion, electricity, water, weather, or any other cause of whatsoever nature.

TERMINATION BY THE YMCA

9.1. EVENTS OF DEFAULT BY THE CITY. This Lease is made upon the condition that the City shall punctually and faithfully perform all of the covenants and agreements by it to be performed as herein set forth. Any of the following shall be considered a “Tenant Event of Default” under this Lease: (a) default by the City in the observance or performance of any of the covenants, agreements, or conditions of this Lease; on the part of the City to be kept and performed, or (b) the vacation or abandonment of the Playground by the City.

9.2. DEFAULT BY THE CITY. If a Tenant Event of Default occurs under this Lease, and if the Tenant Event of Default shall continue for a period of fifteen (15) days after written notice thereof from the YMCA to the City, the YMCA at its option may terminate this Lease and re-enter the Playground and take possession thereof, subject to the City’s right to remove installed equipment and restore the Playground to its pre-Lease condition.

TERMINATION BY THE CITY

10.1. EVENTS OF DEFAULT BY THE YMCA. This Lease is made upon the condition that the YMCA shall punctually and faithfully perform all of the covenants and agreements by it to be performed as herein set forth. Any of the following shall be considered a Landlord Event of Default under this Lease: The YMCA defaults in the observance or performance of any of the covenants, agreements, or conditions of this Lease on the part of the YMCA to be kept and performed.

10.2. DEFAULT BY THE YMCA. If a Landlord Event of Default occurs under this Lease, and if the Landlord Event of Default shall continue for a period of fifteen (15) days after written notice thereof from the City to the YMCA, the City, at its option may terminate this Lease and vacate the Playground.
10.3. **OPTION TO TERMINATE BY THE CITY OR THE YMCA.** If the City is no longer able to procure liability insurance on terms and/or cost satisfactory to the City in the City’s discretion and does not opt to use self-insurance to satisfy all insurance, the City shall notify the YMCA of this fact. In that event, if the City is not satisfied with the terms and/or cost of any alternative liability insurance that can be procured by the YMCA, either the City or the YMCA may thereafter at its option terminate this Lease with fifteen (15) days’ notice to the other party.

10.4. **OPTION TO TERMINATE BY THE CITY.** If Virginia law or the Charter of the City of Norfolk is modified in a way that makes it impermissible for the City to continue to maintain the Playground, the City may at its option terminate this Lease and vacate the Playground with fifteen (15) days’ notice to the YMCA.

**XI. MISCELLANEOUS**

11.1. **ESTOPPEL CERTIFICATES.** At any time and from time to time, the City agrees, upon request in writing from the YMCA, to promptly and without delay, execute, acknowledge and deliver to the YMCA a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified). In the event that the City fails to provide such letter as above-described within seven (7) days after the YMCA’s written request thereof, the City does hereby make, constitute and irrevocably appoint the YMCA as its attorney-in-fact in its name, place and stead so to do.

11.2. **NOTICES.** Any notice, demand, request or other instrument which may be or is required to be given under this Lease shall be delivered in person or sent by United States Certified Mail, postage prepaid and shall be addressed to the parties as follows:

**LESSEE’S NOTICE ADDRESS:**
City Manager, City of Norfolk
810 Union Street, Suite 1100
Norfolk, Virginia 23510

Copy to:
Department of Recreation, Parks and Open Space
401 Monticello Avenue, Suite 420
Norfolk, Virginia 23510

**LESSOR’S NOTICE ADDRESS:**
YMCA
920 Corporate Lane
Chesapeake, Virginia 23320

11.3. **PARTIAL INVALIDITY.** If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or
circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Lease shall be valid and enforced to the fullest extent permitted by law.

11.4. SUBORDINATION. It is agreed that this Lease is and shall be subordinate to any Deed of Trust which is now or may hereafter be on the said Playground, or any part thereof, and that the City will, upon demand, execute and deliver such instruments subordinating this Lease to such Deed of Trust as shall be desired by any beneficiary of any Deed of Trust on, or proposed to be placed on said Playground, or the Property.

11.5. WAIVER. The waiver by the YMCA or the City of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. No covenant, term or condition of this Lease shall be deemed to have been waived by the YMCA or the City, unless such waiver shall be in writing by the YMCA or the City.

11.6. ASSIGNMENT AND SUBLETTING. The City shall not assign this Lease in whole or in part, nor sublet all or any part of the Playground without the prior written approval of the YMCA, which approval shall not be unreasonably withheld. In addition, any assignee/subtenant shall be bound by the terms and requirements of this Lease.

11.7. ENTIRE AGREEMENT. This Lease sets forth all the covenants, promises, agreements, conditions and understandings between the YMCA and the City concerning the Playground and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon the YMCA or the City unless reduced to writing and signed by them.

11.8. CONDEMNATION. If the Playground, or any part thereof, is taken by eminent domain, this Lease shall expire on the date when the Playground shall be so taken. No part of any award shall belong to the City.

11.9. RECORDATION; MEMORANDUM OF LEASE; TRANSFER TAXES AND RECORDING FEES. This Lease shall not be recorded. If the City desires to record this Lease, the City may prepare a Memorandum of Lease and request the YMCA to sign. If the Memorandum of Lease is recorded by the City, the City shall pay the recording fee and any excise tax or transfer taxes levied.

11.10. APPLICABLE LAW. This Lease shall be construed and interpreted under the laws of the Commonwealth of Virginia.

11.11. PARTIES. This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. As used herein, words in singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.
11.12. AMENDMENTS. This Lease may not be amended except by written instrument
duly executed by or on behalf of all of the parties hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day
and year this above written.

LESSOR:

YOUNG MEN'S CHRISTIAN ASSOCIATION
OF SOUTH HAMPTON ROADS

BY: ____________________________ (SEAL)
NAME: William H. George, President

COMMONWEALTH OF VIRGINIA
CITY OF ________________________, to-wit:

I, ________________________, a Notary Public in and for the Commonwealth of Virginia,
whose term of office expires on the _____ day of ____________, 20____, do hereby certify that
William H. George, President of the Young Men's Christian Association of South Hampton Roads,
whose name is signed to the foregoing Lease Agreement, have acknowledged the same before me
in my City and State aforesaid.

Given under my hand this ______ day of ________________________, 2018.

Notary Public
Registration No. __________________________
LESSEE:

CITY OF NORFOLK

BY: ____________________________ (SEAL)
    Douglas L. Smith, City Manager

ATTEST:

______________________________
City Clerk

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, ____________________________, a Notary Public in and for the Commonwealth of
Virginia, whose term of office expires on the _____ day of ________________, 20___, do
hereby certify that Douglas L. Smith, City Manager, and R. Breckenridge Daughtrey, City Clerk,
respectively, of the City of Norfolk, whose names as such are signed to the foregoing Lease
Agreement, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this ______ day of ______________________, 2018.

______________________________
Notary Public
Registration No. __________________________

Approved as to Content:

______________________________
Director of Recreation, Parks and Open Space

Approved for Form and Correctness:

______________________________
Assistant City Attorney
EXHIBIT A

YMCA Blocker Play Area

ALL THOSE certain 45’ x 55’ portion of “Lot – YMCA” as shown on a plat entitled “Resubdivision of The Property of the Young Men’s Christian Association, Bounded on the South by Bute Street, the West by Dunmore Street, the North by York Street, and the East by Parcels A, B, and C, (MB 65 Pg 104), Recorded in the Clerk’s Office of the Circuit Court of the City of Norfolk, Virginia.”, prepared by WPL, dated April 5, 2017, and duly recorded in MB 76 Pg 32-32, in the Clerk’s Office of the Circuit Court of the City of Norfolk, Virginia, and being described as follows: COMMENCING at the northwest corner of said “Lot – YMCA”, said corner is also the PI (Point of Intersection) of the western and northern property line of said lot, thence 50’ along the western property line of said lot and the eastern right-of-way line of Dunmore Street to the PONT OF BEGINNING; thence, leaving the said right-of-way, 55’ easterly and perpendicular to the said right-of-way line to a point; thence 45’ southerly and parallel to the said right-of-way; thence, 55’ westerly and perpendicular to the said right-of-way line to a point along the eastern line of the said right-of-way; thence 45’ northerly along the said eastern right-of-way line to the point of beginning.

The above described parcel contains 2,475 Square Feet, or 0.057 Ac., more or less

March 29, 2018
EXHIBIT B

PROPOSED PLAYGROUND AREA

GATE AT FENCE = POINT OF ACCESS

JOB# 180328

DIVISION OF SURVEYS
DEPARTMENT OF PUBLIC WORKS
NORFOLK, VIRGINIA

EXHIBIT SHOWING
PROPOSED PLAYGROUND AREA
BLOCKER NORFOLK FAMILY YMCA
NORFOLK, VIRGINIA

DATE  SCALE  DRAWN BY  CHECKED BY
04-17-2018  NTS  LB  JTW
SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance, and Attornment Agreement ("Agreement") dated as of ______________, 2018, is made by and among TBVAT, LLC, whose address is 6001 Harbour View Boulevard, Suffolk, Virginia 23435, as trustee ("Trustee") for TowneBank, Grantor and Grantee for recording purposes, the CITY OF NORFOLK, a Virginia municipal corporation of the Commonwealth of Virginia ("Tenant"), Grantor and Grantee for indexing purposes, and YOUNG MEN'S CHRISTIAN ASSOCIATION OF SOUTH HAMPTON ROADS, a Virginia nonstock and not-for-profit corporation, having an address of 920 Corporate Lane, Chesapeake, Virginia 23320 ("Landlord"), Grantor and Grantee for indexing purposes.

RECITALS

A. Landlord is the owner of the land at 312 W. Bute Street, Norfolk, Virginia 23510 and legally described in Exhibit A attached hereto (collectively, the "Property").

B. The Virginia Small Business Financing Authority issued and sold to TowneBank ("Bondholder") its $11,100,000 Revenue Bond (Young Men's Christian Association of South Hampton Roads), Series 2012 ("Bond") and, in conjunction therewith, Landlord delivered a Deed of Trust on the Property to the Trustee to secure repayment to Bondholder of the Note made by Landlord in conjunction with the Bond recorded in the Circuit Court of the City of Norfolk, Virginia as instrument number 120012840 ("Deed of Trust").

C. Landlord and Tenant entered into a Deed of Lease (Community Playground) dated _____________, 2018 ("Lease") under which Landlord leased to Tenant a portion of the Property, as more particularly described in Exhibit B attached hereto ("Premises").

D. Bondholder and Tenant desire to confirm their understanding with respect to, among other things, the subordination of the Lease to the Deed of Trust and Bondholder's agreement not to disturb Tenant's possession of the Premises, subject to and in accordance with the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Bondholder, Landlord, and Tenant agree as follows:

1. Subordination. The Lease and Tenant's leasehold interest under the Lease shall be and shall remain at all times and in each and every respect subject and subordinate to the lien of the Deed of Trust, and to any and all increases, renewals, amendments, modifications, supplements, extensions, consolidations, and replacements of the Deed of Trust including, without limitation, amendments which increase the amount of the indebtedness secured by the Deed of Trust.

2. Non-Disturbance.
So long as the Lease is in full force and effect and there are no Tenant defaults under this Agreement or under the Lease that continue beyond the expiration of any applicable notice and cure periods and that would permit Landlord to terminate the Lease, Bondholder covenants that:

(a) Tenant shall not be named or joined in any foreclosure, sale, or other proceeding by or on behalf of Bondholder to enforce the Deed of Trust unless the joinder is required by law to perfect such a foreclosure, sale or other proceeding.

(b) The enforcement of the Deed of Trust shall not terminate the Lease or disturb Tenant in the possession and use of the Premises.

(c) The leasehold estate granted by the Lease, and Tenant’s right to quiet enjoyment, possession, and any other rights under the Lease, shall not be disturbed or terminated by any transfer of Landlord’s interest in the Property by foreclosure, deed in lieu of foreclosure, or sale (individually and collectively referred to as a "Foreclosure Event").

3. Attornment.

(a) If any Foreclosure Event occurs, Tenant hereby attorns to any transferee, including Bondholder, and its successors and assigns (collectively, "Successor"), as the landlord under the Lease. Tenant shall be bound to Successor under all of the executory terms, covenants, and conditions of the Lease for the balance of the Lease term with the same force and effect as if Successor had been the original landlord under the Lease. Subject to the terms of this Agreement, Successor shall recognize all of the rights and options of Tenant under the Lease and the Lease shall continue in full force as a direct lease between Tenant and Successor, and the respective executory rights and obligations of Tenant and Successor, to the extent of the then remaining balance of the term of the Lease and any extensions and renewals thereunder, shall be and are the same as set forth therein, except as modified by this Agreement. This attornment shall be effective and self-operative without the execution of any further instruments evidencing Successor’s succession to the interest of Landlord under the Lease. From and after the occurrence of any Foreclosure Event, Tenant shall make all payments under the Lease directly to Successor.

(b) Notwithstanding the foregoing, Successor shall not be:

(i) liable for any act, omission, or default of Landlord or any prior landlord that continue to accrue after Successor obtains title to the Property;

(ii) liable for any damage for a breach of any representation or warranty contained in the Lease by Landlord or any prior landlord under the Lease;

(iii) subject to any offsets or defenses which Tenant might have against Landlord or any prior landlord;

(iv) bound by any amendment, modification, cancellation, or surrender of the Lease, or by any waiver or forbearance on the part of Landlord or any prior landlord made or given without Bondholder’s written consent. Notwithstanding the foregoing, Landlord and Tenant may enter into lease amendments and/or modifications without Bondholder’s prior consent and Successor shall be bound to such amendment to the same extent Landlord would be bound by it provided any such amendment or
modification does not: (A) increase the obligations of Landlord under the Lease; (B) reduce the rights and remedies of Landlord under the Lease; (c) reduce the obligations of Tenant under the Lease; (D) grant to Tenant any options or rights of first refusal in the Premises or the Property; or (E) amend the term of the Lease.

(v) bound to make any payment to Tenant or perform any work required to be made or performed by Landlord or relating to periods prior to the date on which the interests of Landlord under the Lease are transferred to Successor, and Successor shall not be obligated to pay for any work allowance or contribution required to be made by Landlord pursuant to the terms of the Lease; or

(vi) bound by any responsibility to repair or restore the Property after damage or destruction of the Property, or any part thereof, due to fire or other casualty occurring prior to the date that Successor obtains title to the Property, or by reason of condemnation occurring prior to the date that Successor obtains title to the Property.

4. Limitation on Bondholder’s Performance.

Nothing in this Agreement shall be deemed or construed to be an agreement by Bondholder to perform any obligation of Landlord as the landlord under the Lease unless and until Bondholder or any Successor, obtains title to the Property.

5. Notices.

All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given:

(a) when delivered by hand, with written confirmation of receipt;

(b) when received by the addressee, if sent by a nationally recognized overnight courier (return receipt requested); or

(c) on the third (3rd) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section):

If to Bondholder: TowneBank
6001 Harbour View Blvd.
Suffolk, VA 23435
Attention: Anne C.H. Conner

If to Tenant: City of Norfolk
810 Union Street, Suite 1100
Norfolk, VA 23510
Attention: City Manager

with a copy to:
Department of Recreation, Parks and Open Space
401 Monticello Avenue, Suite 420
Norfolk, VA 23510

If to Landlord: Young Men’s Christian Association of South Hampton Roads
920 Corporate Lane
Chesapeake, VA 23320
Attention: William H. George, President

with a copy to:
Poole Brooke Plumlee PC
4705 Columbus Street, Suite 100
Virginia Beach, VA 23462-6749
Attention: Albert H. Poole, Esq.

6. **Entire Agreement.**

   This Agreement constitutes the entire agreement between the parties regarding the subordination of the Lease, the leasehold estate created by the Lease, and all rights of Tenant under the Lease to the lien of the Security Instrument and other Loan Documents, and as to the rights and obligations of the parties regarding the subject matter of this Agreement. This Agreement supersedes and cancels all oral negotiations and prior and other writings with respect to the subject matter hereof. If there is any conflict between the provisions of this Agreement and those of the Lease, the provisions of this Agreement shall prevail.

7. **Amendments and Termination.**

   This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

8. **Waiver.**

   No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

9. **Governing Law.**
This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Virginia, without regard to the choice of law rules of Virginia.

10. **Severability.**

   In the event any one or more of the provisions in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any of the other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision was not contained herein.

11. **Successors and Assigns.**

   This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.

12. **Counterparts and Original Counterparts.**

   This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

   IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

   **BONDHOLDER:**
   **TOWNEBANK:**
   **TBVAT, LLC**

   By: ________________________________
   Name: ________________________________
   Title: ________________________________

   **COMMONWEALTH OF VIRGINIA**
   **CITY/COUNTY OF ________________, to-wit:**

   The foregoing instrument was acknowledged before me this ______ day of ______, 2018, by ________________________________, as ______________________ of TBVAT, LLC, as Trustee of TowneBank, on its behalf, who is personally known to me or has provided a valid form of proof of identification.

   ____________________________________________
   Notary Public

   My Commission Expires: _________________________
   My Registration Number: _________________________

   **TENANT:**
   **CITY OF NORFOLK**
COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, ____________________________, a Notary Public in and for the City of Norfolk, in the Commonwealth of Virginia, whose term of office expires on the _____ day of __________________, 20___, do hereby certify that Douglas L. Smith, City Manager, and Richard A. Bull, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing Lease Agreement, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this ______ day of __________________, 2018.

Notary Public
Registration No. ____________________________

Approved for Form and Correctness:

________________________________________
Assistant City Attorney

LANDLORD:
YOUNG MEN’S CHRISTIAN ASSOCIATION OF SOUTH HAMPTON ROADS
COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF ____________, to-wit:

The foregoing instrument was acknowledged before me this ____ day of ________________, 2018, by William H. George, as President of Young Men's Christian Association of South Hampton Roads, a Virginia nonstock and not-for-profit corporation, on its behalf, who is personally known to me or has provided a valid form of proof of identification.

Notary Public

My Commission Expires: ______________________
My Registration Number: ______________________
PLACEHOLDER FOR EXHIBIT A TO SUBORDINATION AGREEMENT
YMCA Blocker Play Area

ALL THOSE certain 45' x 55' portion of “Lot – YMCA” as shown on a plat entitled “Resubdivision of The Property of the Young Men’s Christian Association, Bounded on the South by Bute Street, the West by Dunmore Street, the North by York Street, and the East by Parcels A, B, and C, (MB 65 Pg 104), Recorded in the Clerk’s Office of the Circuit Court of the City of Norfolk, Virginia.”, prepared by WPL, dated April 5, 2017, and duly recorded in MB 76 Pg 32-32, in the Clerk’s Office of the Circuit Court of the City of Norfolk, Virginia, and being described as follows: COMMENCING at the northwest corner of said “Lot – YMCA”, said corner is also the PI (Point of Intersection) of the western and northern property line of said lot, thence 50’ along the western property line of said lot and the eastern right-of-way line of Dunmore Street to the PONT OF BEGINNING; thence, leaving the said right-of-way, 55’ easterly and perpendicular to the said right-of-way line to a point; thence 45’ southerly and parallel to the said right-of-way; thence, 55’ westerly and perpendicular to the said right-of-way line to a point along the eastern line of the said right-of-way; thence 45’ northerly along the said eastern right-of-way line to the point of beginning.

The above described parcel contains 2,475 Square Feet, or 0.057 Ac., more or less

March 29, 2018