



City of Norfolk

Office of the City Manager

Dir., Finance

January 25, 2011

To the Honorable Council
City of Norfolk, Virginia

Re: Purchase of Property located at 3575
Mississippi Avenue - Property of Wayne
E. and Anita D. Morgan

Ladies and Gentlemen:

I. **Recommended Action:** Adopt Ordinance

II. **Overview**

This agenda item authorizes the purchase of property located at 3575 Mississippi Avenue. The property is owned by Wayne E. and Anita D. Morgan (The "Morgans"). The property is across the street from the Ingleside Light Rail station. The acquisition of the property is seen as strategic in City efforts to create a buffer between the light rail line and station and the neighborhood.

III. **Analysis**

A. **General**

This Ordinance approves a Purchase and Sale Agreement for the acquisition of the property located at 3575 Mississippi Avenue. This purchase supports the City's effort to minimize the impact of the light rail station on the homes in the immediate vicinity. Offers were made to four property owners to purchase their homes based on independent appraised values. The Morgans are the only family to accept the City's offer to date.

At Closing, the Morgans will enter into a Possession Agreement that permits the family to remain in the home for up to but not exceeding six (6) months or until they relocate.

B. **Fiscal**

The agreed purchase price is the appraised value of \$168,000. In addition, the City has offered relocation assistance of up to \$25,000 based on actual documented expenses of moving. The ordinance, also,

authorizes an expenditure of up to \$25,000 for other typical costs of the transaction, such as a Phase 1 Environmental Study and the title update. The Morgans will pay \$10 per month to remain in the home, as well as, all taxes, utilities and other assessments until the Possession Agreement is terminated.

C. Environmental

An Environmental Phase 1 study will be completed prior to the Closing on the property.

D. Community Outreach/Notification

Public notification of this agenda item was conducted through the City of Norfolk's agenda notification process.

IV. Conclusion

The purchase of this property by the City supports the overall, long-term plan for light rail. Therefore, it is recommended that the City Council adopt the attached ordinance which authorizes the City Manager to negotiate and execute a Purchase and Sale Agreement and Possession Agreement, the payment of relocation expenses and the appropriation of funds to cover the agreed purchase price and other costs of the transaction.

Respectfully submitted,



Stanley Stein
Interim City Manager

Coordination/Outreach

This letter has been coordinated with the Office of Real Estate and the City Attorney's Office.

1/5/10 ts

Form and Correctness Approval:

By [Signature]
Office of the City Attorney

NORFOLK, VIRGINIA

Contents Approved:

By [Signature]
DEPT.

Pursuant to Section 72 of the City Charter, I hereby certify that the money required for this item is in the city treasury to the credit of the fund from which it is drawn and not appropriated for any other purpose.

5551

\$ 23,000.00

4000 2 1170 FY06

Account

[Signature]
Director of Finance01/14/11
Date**ORDINANCE No.**

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO NEGOTIATE AN AGREEMENT IN SUBSTANTIAL CONFORMITY WITH THE TERMS AND CONDITIONS OF THE ATTACHED PURCHASE AND SALE AGREEMENT, FOR THE PURPOSE OF PURCHASING A CERTAIN PARCEL OF REAL PROPERTY KNOWN AS 3575 MISSISSIPPI AVENUE, IN THE CITY OF NORFOLK, AUTHORIZING THE PURCHASE OF SAID PROPERTY, AUTHORIZING THE EXPENDITURE OF A SUM OF UP TO \$168,000.00 FOR SUCH PURPOSE, UP TO \$25,000 FOR THE REIMBURSEMENT OF RELOCATION COSTS TO THE SELLER, AND \$20,000.00 FOR CLOSING COSTS, FROM FUNDS HERETOFORE APPROPRIATED, AND AUTHORIZING A POSSESSION AGREEMENT WITH THE SELLER.

WHEREAS, Section 2 of the Charter of the City of Norfolk authorizes the purchase of real property by the City for its purposes; now, therefore,

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

Section 1:- That the purchase of the parcel of real property located in the City of Norfolk, known as 3575 Mississippi Avenue, is hereby authorized and approved.

Section 2:- That the City Manager is hereby authorized to negotiate an agreement for the purchase of the aforesaid property in substantial conformity with the terms and conditions of the Purchase and Sale Agreement, a copy of which is attached hereto and made a part of this ordinance as Exhibit 1.

Section 3:- That the City Manager is further authorized to correct, amend or revise the Purchase and Sale Agreement as she may deem advisable and in a manner satisfactory to the City Attorney and consistent with this ordinance to carry out the intentions of the Council.

Section 4:- That upon receipt of a Deed, in form satisfactory to the City Attorney, conveying the real property to the City of Norfolk, the City Manager is authorized to accept the Deed on behalf of the City, to pay the appropriate party or parties, from funds heretofore appropriated, a sum of up to One Hundred Sixty Eight Thousand Dollars (\$168,000.00), in accordance with the terms and conditions of the Purchase and Sale Agreement, and to do all other things necessary and proper to effect the conveyance of the real property to the City.

Section 5: - That a sum up to \$25,000.00 is hereby appropriated and its expenditure hereby authorized for the reimbursement of Seller's relocation costs.

Section 6: - That a sum up to \$20,000.00 is hereby appropriated and its expenditure is authorized for closing and acquisition costs.

Section 7: - That the City Manager is authorized to enter into a Possession Agreement in substantial conformity with the terms and conditions of the Possession Agreement, a copy of which is attached hereto and made a part of this ordinance as Exhibit 2.

Section 8:- That this ordinance shall be in effect from and after its adoption.

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT made this day of , 2011, between **WAYNE E. MORGAN AND ANITA D. MORGAN** (jointly "Seller") and the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia ("Purchaser").

RECITALS

WHEREAS, Seller is the owner in fee simple absolute of certain real property, together with all improvements thereon and all rights and appurtenances thereunto pertaining, located in the City of Norfolk, Virginia, at 3575 Mississippi Avenue, as more particularly shown in **Exhibit A** ("Property"); and

WHEREAS, Purchaser has the right and authority to condemn the Property and shall do so if not voluntarily sold pursuant to the terms and conditions of this Agreement; and

WHEREAS, Purchaser desires to purchase and Seller desires to sell the Property in accordance with the terms and conditions of this Agreement; now, therefore.

WITNESSETH:

That for and in consideration of the purchase price and the mutual promises contained in this Agreement, the parties agree as follows:

1. **SALE.** Seller agrees to sell and Purchaser agrees to purchase the Property, together with all easements, rights, and appurtenances thereto, all buildings and improvements now located thereon, and all of Seller's right, title, and interest in all public ways adjoining same, if any.

2. **PURCHASE PRICE.** The purchase price ("Purchase Price") for the Property is One Hundred Sixty-Eight Thousand Dollars (\$168,000.00). Upon the execution of this Agreement, Purchaser shall make an earnest money deposit ("Deposit") of Thirty Thousand Dollars (\$30,000.00) to be held by Pioneer Title in a non-interest bearing account. At closing, the Deposit shall be released to the Settlement Agent and the balance of the Purchase Price will be paid to the Settlement Agent., in the form of a city check or by wire transfer of funds.

3. **CLOSING.** Closing will be made at the offices of the City Attorney or if different at the offices of the Settlement Agent, on or before February 28, 2011 ("Closing Date").

4. **CONVEYANCE.**

a. Seller agrees to convey the Property to Purchaser by general warranty deed with modern English covenants of title, free and clear of all encumbrances, and liens (for taxes or otherwise), except as may otherwise be provided in this Agreement, subject to applicable easements and restrictive covenants of record not adversely affecting the use of the Property for any purpose or rendering the title unmarketable.

b. If a defect or non-permitted encumbrance is found Seller may, at Seller's expense, either take action as is necessary to cure the defect or opt not to cure the defect and will provide Purchaser with notice of its decision. If Seller either fails or opts not to cure the defect, Purchaser will have the option of terminating this Agreement or waiving the defect and proceeding to Closing on the terms set forth herein. Notwithstanding the foregoing, Seller shall not be relieved of its obligation to discharge any lien which can be satisfied by the payment of money at or before Closing hereunder.

c. Seller and Purchaser shall enter into a Possession Agreement in substantial conformity to the agreement hereto attached as **Exhibit B**, allowing Purchaser to retain possession of the Property for up to six (6) months after the Closing Date. Purchaser will have access to the Property for the purposes specified herein.

d. Seller agrees to pay the expenses of the recordation tax applicable to grantors and any attorney's fees incurred by Seller. Purchaser will pay all other fees charged in connection with recordation of the deed.

e. Seller and Purchaser agree that the title insurance company selected by the Purchaser shall act as the settlement agent ("Settlement Agent") at Purchaser's expense. The Settlement Agent shall prepare the settlement statement, update and record the deed, collect and disburse settlement funds in accordance with this Agreement and the settlement statement, and file any required state and federal tax forms or other certifications.

5. **RIGHT OF ENTRY.** Purchaser and Purchaser's authorized representatives may at any reasonable time and after giving reasonable notice to Seller, enter upon the Property for the purpose of conducting a Phase I, and if deemed necessary a Phase II, environmental site assessment and making inspections, appraisals, surveys, including the cutting of survey lines and putting up markers and driving stubs and stakes, site analysis, engineering studies, core sampling for engineering reports, and locating existing rights of way, easements, and utilities. Purchaser will exercise this right of entry in such a way so as to minimize damage to the Property. To the extent permitted by law, Purchaser agrees to save harmless the Seller from all claims of liability for any personal injury or property damage or otherwise to any person or property caused by any action or omission of Purchaser or its agents before or after Closing. Seller agrees to indemnify and save harmless the Purchaser from all claims of liability for any personal injury or property damage or otherwise to any person or property occurring on the Property and caused by action or omission of Seller or its agents before Closing.

6. **CONDITIONS.** Purchaser's obligations are expressly conditioned upon the satisfaction of each of the following conditions upon the reasonable determination of Purchaser. If any one of the following conditions cannot be met within 60 days after the effective date of the ordinance authorizing the purchase of this property ("Effective Date"), the Purchaser may unilaterally terminate this Agreement:

a. Receipt of a satisfactory title commitment with all unacceptable title exceptions, encumbrances, and conditions as deemed by Purchaser removed or cured at Seller's cost;

b. Receipt of a Phase I Environmental Assessment and Report ("Phase I Report") conducted and prepared by an environmental engineering and inspection company selected by Purchaser at Purchaser's expense and such other testing and reports as may be reasonably required by Purchaser or recommended in the Phase I Report;

c. Receipt of a report satisfactory to Purchaser of the results of testing of any underground or aboveground storage tanks located on the Property; and

d. Satisfaction by Seller of all of its obligations under this Agreement.

7. **SELLER'S AND PURCHASER'S DOCUMENTATION.** To the extent that any of the following items exist and are in the possession of the Seller and can be located through a reasonable search, Seller agrees to furnish to Purchaser, within 10 days from the Effective Date, any and all surveys, title reports, topographical maps, engineering and architectural drawings or plans, lot layouts, and any plans or profiles of any roadways, easements, or utility lines, proffered conditions, and any and all correspondence or agreements with any federal, state, or city governmental body or agency thereof in connection with the acquisition, purchase, or development of the Property. Seller further agrees to furnish to Purchaser all information available to Seller concerning the environmental condition of the Property and the existence of any contract rights that Seller might hold for the service of the Property by utilities, either public or private.

8. **ENVIRONMENTAL AND RELATED MATTERS.**

a. **Definitions.** As used in this Agreement, the following terms will have the following meanings:

(i) **Contamination** means any release of a Hazardous Substance; Petroleum Substance or Product; polychlorinated biphenyl ("PCB"); asbestos or asbestos containing material; radon gas; or other substance considered to be a contaminant by professionals in the field of environmental assessments under standard commercial practice;

(ii) **Hazardous Substance** means those substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601(14), and includes any material that is toxic, flammable, explosive, or corrosive as these terms are defined by CERCLA. Petroleum Substances or Products as defined below are excluded.

(iii) **Petroleum Substance or Product** means any material containing refined or crude oil, or any fraction thereof, and includes natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixtures of natural gas and such synthetic gas. Hazardous Substances as defined above are excluded.

(iv) **Phase I and Phase II Environmental Assessment** have the meanings understood by professionals in the field of environmental assessments, which will include screening the Property for existing or threatened Contamination, be designed to avail Purchaser of certain

defenses under applicable federal or state law, and include such other and further inquiries and examinations as are considered necessary or desirable under standard commercial practice at the time the assessment is conducted.

(v) **Release** means occurrences as defined by CERCLA, 42 U.S.C. §9601(10), and includes any intentional or accidental discharging, spilling, leaking, pumping, pouring, injecting, escaping, leaching, dumping, disposing, or emitting into the environment.

b. **Phase I Environmental Assessment.**

(i) As a condition precedent to Purchaser's obligation to purchase, Purchaser, at Purchaser's expense, will have a Phase I Environmental Assessment of the Property performed by a qualified environmental consultant (the "Consultant") selected by Purchaser and reasonably acceptable to Seller, conducted in accordance with standard commercial practice at the time of the assessment. A copy of the Phase I Environmental Assessment will be made available to Seller, together with copies of any supplemental reports or assessments.

(ii) If the Consultant recommends soil, water, or structural remediation or further assessment activity after or as a result of performing a Phase I Environmental Assessment, Purchaser may at its option:

(A) Terminate this Agreement; or

(B) Extend the time for Closing if necessary for a period of time mutually agreeable to Purchaser and Seller and affirm this Agreement, in which event Seller may, at Seller's expense, either diligently perform all actions reasonably necessary to fulfill Consultant's recommendations, including the performance of a Phase II Environmental Assessment, the completion of which to Purchaser's reasonable satisfaction will be a condition precedent to Purchaser's obligations under this agreement or Seller will give notice to Purchaser that it is unable or unwilling to take the actions required to fulfill consultant's recommendations.

(iii) In the event Purchaser elects option (B) above and Seller elects not to conduct the corrective action as required by Purchaser, Purchaser and Seller cannot agree on the extension of time for Closing for completion by Seller of the corrective action, or the corrective action as completed by Seller pursuant to option (B) is unsatisfactory to Purchaser, Purchaser may elect, in its sole discretion, to perform or complete, as the case may be, the corrective action, at Purchaser's expense or Purchaser may elect to endeavor to renegotiate this Agreement, then either Purchaser or Seller may elect to terminate this agreement.

(iv) If Seller elects not to conduct the corrective action as requested by Purchaser as described above, and Purchaser elects to proceed to Closing, then Purchaser agrees that Purchaser is accepting the Property "as is" in regard to any environmental issues.

(v) In the event remediation of the Property is necessary and the remediation is not completed within 90 days from the Effective Date, and cannot be completed in 30 additional days using diligent efforts the Purchaser or Seller will have the right to void this Agreement upon

notice to the other party, in which event neither party will be under any further obligation to the other.

9. **REPRESENTATIONS AND WARRANTIES BY SELLER.** Seller represents and warrants as of the date of this Agreement and as of the date of Closing that:

a. Seller has the right, title, and authority to enter into this Agreement and to perform the obligations of the Seller hereunder;

b. The entry and performance of this Agreement by Seller will not breach any other agreement with any other party or create a violation of any applicable law, rule, or regulation;

c. The Seller has no actual knowledge of any environmental liens, restrictions, notifications, or conditions regarding the release, treatment, storage, or disposal of Hazardous Substances or Petroleum Products claimed or threatened relating to the Property. The Seller has no actual knowledge of any administrative proceedings, litigation, or any notices, claims, or assertion of a violation of any environmental, health or safety law or regulation affecting the Property. There are no existing boundary, water or, drainage disputes of which the Seller has any actual knowledge, except as noted herein;

d. The Seller has no actual knowledge or any actions or proceedings threatened against the Seller to condemn all or any part of the Property.

10. **CONDEMNATION.** In the event Seller or Purchaser becomes aware that the Property or any part of it is or will become the subject of a condemnation proceeding (other than by Purchaser), whether for public or quasi-public use, the party will immediately give notice to the other party of the condemnation proceeding. Upon the giving or receipt of this notice, Purchaser will have the option, by giving written notice to Seller within 30 days following receipt of notice of a condemnation proceeding:

a. To permit Seller to negotiate with the condemning authority and receive the condemnation award, in which event Purchaser will take title to the remaining Property in accordance with the terms and conditions of this Agreement, and the Purchase Price will be reduced by the amount received or receivable by Seller as compensation for that portion of the Property so taken;

b. To take title in accordance with the terms and conditions of this Agreement and negotiate with the condemning authority for the condemnation award and receive its benefits; or

c. To terminate this Agreement.

11. **NOTICES.** All notices to the parties hereto will be delivered by hand, via certified mail return receipt requested, by a nationally recognized commercial overnight delivery service such as Federal Express, or via facsimile and all be deemed effective upon delivery if by hand and upon confirmation of receipt if by other means, to the following address until the address is changed by notice in writing to the other party:

Purchaser: Bernard A. Pishko, City Attorney
City of Norfolk
900 City Hall Building
Norfolk, Virginia 23510

Seller: Mr. and Mrs. Wayne E. Morgan
3575 Mississippi Avenue
Norfolk, VA 23501

12. **SURVIVAL.** The provisions contained in this Agreement, including Seller's obligations and warranties and representations included in paragraph 9, will be true as of the date of this Agreement and as of the date of Closing..

13. **PRORATIONS.** All taxes and utility bills, if any, will be prorated as of the date of Closing.

14. **RISK OF LOSS.** All risk of loss or damage to the Property by fire, windstorm, casualty, or other cause is assumed by Seller until Closing. In the event of substantial loss or damage to the Property before Closing Purchaser will have the option of either:

- a. Terminating this Agreement, or
- b. Affirming this Agreement, in which event Seller will assign to Purchaser all of Seller's rights under any policy or policies of insurance applicable to the Property.

15. **BROKERAGE OR AGENT'S FEES.**

a. Purchaser represents and warrants to Seller that Purchaser has dealt with no agent, broker or finder in connection with the acquisition of the Property and this Agreement. Purchaser shall have no obligation whatsoever to pay any brokerage fee or agent's fees for any broker or agent retained by Seller, and Seller agrees to indemnify Purchaser against any claim which may be made for such brokerage fee.

b. Seller represents and warrants to Purchaser that Seller has dealt with no agent, broker or finder in connection with the sale of the Property and this Agreement. Seller shall have no obligation whatsoever to pay any brokerage fee or agent's fees for any broker or agent retained by Purchaser, and Purchaser agrees to indemnify Seller against any claim which may be made for such brokerage fee.

16. **DEFAULT AND REMEDIES.**

a. If the sale and purchase contemplated by this Agreement is not consummated because of Seller's or Purchaser's default, the non-defaulting party may elect to:

(i) Terminate this Agreement; or

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

b. If either Seller or Purchaser defaults under this Agreement, the defaulting party will be liable for any expenses incurred by the non-defaulting party in connection with the enforcement of its rights under this Agreement, including reasonable attorney's fees.

c. These remedies are cumulative and non-exclusive and may be pursued at the option of the non-defaulting party without a requirement of election of remedies.

17. **CITY'S ASSISTANCE WITH RELOCATION EXPENSES.**

Seller shall provide Purchaser relocation assistance for a total value not to exceed Twenty-Five Thousand Dollars (\$25,000.00). Purchaser shall be reimbursed for costs incurred in the purchase of a new home and the move from the Property, as itemized and specified in **Exhibit C** hereto attached and incorporated by reference.

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

19. **WAIVER.** Failure to insist upon strict compliance with any of the terms, covenants, or conditions hereof will not be deemed a waiver of the term, covenant, or condition, nor will any waiver or relinquishment of any right or power at any one time or more times be deemed a waiver or relinquishment of the right or power at any other time or times.

20. **SEVERABILITY.** This Agreement will be construed in its entirety and will not be divisible, except that the invalidity or unenforceability of any provision hereof will in no way affect the validity or enforceability of any other provision.

21. **CAPTIONS.** Captions are used in this Agreement for convenience only and will not be used to interpret this Agreement or any part of it.

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

23. **CHOICE OF FORUM/JURISDICTION.** The parties hereby consent to the jurisdiction and venue of the courts of the Commonwealth of Virginia, specifically to the courts of the City of Norfolk, Virginia, in connection with any action, suit, or proceeding arising out of or relating to this Agreement.

24. **WAIVER OF TRIAL BY JURY.** The parties waive trial by jury in any action, proceeding, or counterclaim brought by either party against the other on any matter whatsoever arising out of or in any way connected with this agreement or any related agreements or instruments and the enforcement thereof, including any claim of injury or damage to any party or the property of any party.

25. **SUCCESSOR/ASSIGNMENT.** This Agreement will be binding upon and the obligations and benefits hereof will accrue to the parties hereto, their heirs, personal representatives, successors, and assigns. This Agreement is not assignable by Seller without Purchaser's consent. If this Agreement is assigned by Purchaser with Seller's consent, Purchaser will nevertheless remain fully liable for its performance.

26. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each will be considered an original, and together they will constitute one Agreement.

27. **FACSIMILE SIGNATURES.** Facsimile signatures will be considered original signatures for the purpose of execution and enforcement of the rights delineated in this Agreement.

WITNESS the following duly authorized signatures:

WAYNE E. MORGAN

ANITA D. MORGAN

CITY OF NORFOLK

By: _____
Stanley Stein, Interim City Manager

ATTEST:

City Clerk

APPROVED AS TO CONTENTS:

Manager of Real Estate

APPROVED AS FORM AND CORRECTNESS:

Deputy City Attorney

CERTIFICATION OF FUNDING

I hereby certify that the money required for this Purchase and Sale Agreement is in the City Treasury to the credit of the fund from which it is to be drawn and not appropriated for any other purpose.

Account: _____

Amount: \$168,000.00 + \$25,000.00

Contract No.: _____

Vendor Code: _____

Business License No.: _____

Director of Finance

Date

POSSESSION AGREEMENT

THIS POSSESSION AGREEMENT ("Agreement") made this ____ day of _____, 2010, by and between the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia ("Norfolk"), and **WAYNE E. MORGAN** and **ANITA D. MORGAN** (jointly "Seller").

WITNESSETH:

WHEREAS, Seller was the owner of that certain property ("Property") located at 3575 Mississippi Avenue in the City of Norfolk, such Property being more particularly described in Exhibit A, attached hereto; and

WHEREAS, pursuant to that certain Purchase and Sale Agreement, dated _____, 2010, Seller has agreed to convey the Property to Norfolk by General Warranty Deed, said conveyance being conditioned upon Seller's right to retain possession of the Property for a term of up to six (6) months in accordance with the terms and conditions of this Possession Agreement;

NOW, THEREFORE, for and in consideration of the rents, covenants and agreements hereinafter mentioned, reserved and contained, to be paid, kept and performed by Seller, the parties hereby agree as follows:

1. **TERM OF POSSESSION.**

Seller shall be permitted to retain possession of the Property for the term of up to six (6) months (the "Term") to commence as of the date of closing of the conveyance of the Property from Seller to Norfolk (the "Commencement Date") and to end no later than six (6) months from the Commencement Date (the "Termination Date"). The Term may be extended by mutual agreement of the parties in writing. Seller may terminate this Agreement at any time by giving Norfolk thirty (30) days notice.

2. **USE.**

Seller covenants and agrees to use and occupy the Property for the continuation of its use as Seller's residence, and for no other purpose, unless agreed by Norfolk in writing.

3. **ACCEPTANCE OF PREMISES.**

Seller accepts the Property in its present condition, "As Is." Seller further acknowledge that neither Norfolk nor anyone on Norfolk's behalf has made any representations or warranties with respect to the condition of the Property.

4. **COMPENSATION.**

The compensation, payable by Seller to Norfolk shall be Ten Dollars (\$10.00) per month. If Closing occurs on a date other than the first day of the month, the first monthly payment shall be prorated at Closing for the period between the Commencement Date and the end of that month. Subsequent monthly payments shall be made in advance and without notice on the first day of each month during the term, beginning on the first day of the month following the conveyance to Norfolk. All payments shall be by check or money order made payable to the Norfolk City Treasurer and sent to the Office of Real Estate, 306 City Hall Building, 810 Union Street, Norfolk, Virginia, 23510.

In the event Seller delivers possession of the Property to Norfolk prior to the end of a month and payment has been received by Norfolk for the entire month, Norfolk shall retain the whole payment.

5. **TAXES AND ASSESSMENTS.**

During the term of this Agreement, Seller shall be responsible for all taxes, utilities fees, and assessments imposed on the Property by any lawful authority. Seller shall keep Seller's utility accounts active until the Termination Date.

6. **INSURANCE.**

6.1 Seller, at Seller's own cost and expense, shall obtain and maintain Public Liability Insurance on the Property for the joint and separate benefit of Norfolk and Seller, in an amount not less than \$500,000 for injury to or death of one person, \$1,000,000 for any one occurrence and \$100,000 for property damage. Norfolk shall be named an Additional Insured under such insurance policy. Evidence of insurance in the form of a signed policy endorsement confirming the existence of such policy, and any future modifications or renewals of the policy, shall be mailed to the Office of the Norfolk City Attorney, 900 City Hall, 810 Union Street, Norfolk, Virginia 23510, Attention: Nada Kawwass.

6.2 Seller is responsible for any and all damages to Seller's furniture, fixtures, appliances and equipment, and will at all times during the Agreement term maintain all risk property insurance against damage by fire or other perils. Such insurance policy shall specifically include debris removal, and shall be in an amount to cover the cost of debris removal in the event of damage or destruction by fire or other peril. All such insurance policies shall include a waiver of subrogation, and all liability policies shall specifically name Norfolk as an Additional Insured under the policy. If Seller fails to provide such insurance and fails to cure within 10 days after notice has been given, Norfolk may terminate this Agreement with ten (10) days notice to Seller. Certificates of Insurance verifying all required insurance policies shall be delivered to Norfolk prior to closing on the conveyance of the Property by Seller to Norfolk.

6.3 Seller agrees to look solely to the proceeds of Seller's own insurer(s) for indemnity against exposure for casualty losses of property or business interruption. Seller warrants that the insurers shall have no rights against Norfolk by virtue of assignment, loan agreement or otherwise.

7. **UTILITIES.**

Seller shall pay all utility meter and services charges, including but not limited to those for gas, sewer, electricity, water and any deposits required by utility suppliers with respect to the Property.

8. **REPAIRS.**

Seller shall keep and maintain the Property in a good and complete state of repair and condition, except for ordinary wear and tear. Seller shall make all repairs and replacements of every kind and character, and maintain the Property and the appurtenances belonging thereto, except damage by acts of nature or fire or structural damage that is not the fault of Seller, and will not call upon Norfolk during the term of this Agreement for the making of any repairs or replacements whatsoever. All repairs and replacements shall:

- (a) be performed in a good and workmanlike manner,
- (b) be at least substantially equal in quality and usefulness to the original work,
- (c) meet all applicable code requirements, and
- (d) not diminish the overall value of the Property.

In this context "Property" includes the partitions, ceilings, floors and other improvements heretofore or hereafter constructed at Seller's expense.

9. **REQUIREMENTS OF PUBLIC AUTHORITIES:**

Seller shall suffer no waste or injury in or about the Property and shall comply with all federal, state, and municipal laws, ordinances and regulations applicable to the structure, use and occupancy of the Property, including, without limiting the generality of the foregoing, the making of any structural repairs that may be required in order to comply with said laws, ordinances and regulations. In addition, Seller shall effect the correction, prevention and

abatement of nuisances, violations or other grievances in upon or connected with the Property and shall also promptly comply with all rules, orders and regulations of the Board of Fire Underwriters and any insurance company insuring the Property. In this context, "Property" includes the partitions, ceilings, floors and other improvements heretofore and hereafter constructed at Seller's expense.

10. **NORFOLK'S RIGHT TO CURE.**

Norfolk and its agents and workmen shall have the right to enter into and upon the Property at all reasonable times after reasonable notice for the purpose of inspection and examination of the state or repair and condition thereof. Norfolk may, but shall not be obligated to make such repairs as shall be necessary as a consequence of any failure of Seller to meet Seller's obligations under this Agreement after 15 days notice to Seller. The cost of any such reasonable repairs undertaken by Norfolk shall be payable by Seller upon demand by Norfolk. The making of any such repairs by Norfolk shall not constitute a waiver by Norfolk of any right or remedy provided by this Agreement upon Seller's default in the making of repairs.

11. **DESTRUCTION.**

If, during the term of this Agreement, the Property or any part thereof, including portions of the building not occupied by Seller, shall be damaged by fire, storm, or other casualty, Norfolk shall not be obligated to repair or rebuild the same, and if the Property becomes untenable due to fire, storm, or other casualty and would not be rendered tenantable by Seller's discharge of the obligation to maintain and repair the Property, as herein defined, this Agreement shall immediately terminate upon Seller's giving written notice to Norfolk of the necessity for such termination. Seller shall be responsible for the cost of clearing away all debris resulting from any such damage or destruction to the extent the cost of such clearing of debris is

covered by Seller's insurance. Seller shall at all times maintain insurance to cover the costs of debris removal as set forth in paragraph 6.2 above.

12. **INDEMNIFICATION.**

Seller shall indemnify and save harmless Norfolk from all fines, penalties, costs, suits, proceedings, liabilities, damages, claims, and actions of any kind arising out of the use and occupation of the Property, by reason of any breach or nonperformance of any covenant or condition of this Agreement by Seller, or by Seller's intentional act or negligence, and not caused by the negligence of Norfolk or the concurrent negligence of Norfolk and Seller or the concurrent negligence of Norfolk and a third party. This indemnification shall extend to all claims of any person or party for death or injury to persons and damage to any property, and to legal expenses, including reasonable attorney's fees, incurred by Norfolk in the defense of such claims or incurred by Norfolk as a result of a breach of any provision of this Agreement by the Seller, but does not extend to circumstances caused by the negligence of Norfolk or the concurrent negligence of Norfolk and Seller or the concurrent negligence of Norfolk and a third party. Notwithstanding anything else herein to the contrary, Seller shall not be responsible for damage to the building resulting from acts of nature or fires or structural damage which are not the fault of Seller.

13. **NON-LIABILITY OF NORFOLK.**

Norfolk shall not be liable for any damage or injury which may be sustained by Seller or any other person as a consequence of the failure, breakage, leakage or obstruction of the water, plumbing, steam, gas, sewer, drains, leaders, gutters, valleys or the like, or of the electrical, or sprinkler, equipment, if any, in the Property, or by reason of the elements, unless such damage or injury is caused by Norfolk or the concurrent negligence of Norfolk and Seller or the concurrent negligence of Norfolk and a third party.

14. **ALTERATIONS.**

Seller will not make any material improvements, changes, installations, renovations, additions or alterations in and about the Property without the prior written consent of Norfolk.

15. **ASSIGNMENT AND SUBLETTING.**

Seller will not assign this Agreement or sublet the Property.

16. **AIR AND WATER POLLUTION.**

Seller expressly covenants and agrees to indemnify, defend and save Norfolk harmless against any claim, damage, liability, cost, penalty, or fine which Norfolk may suffer as a result of air, noise or water pollution caused by Seller in the use of the Property. Seller covenants and agrees to notify Norfolk immediately of any claim or notice served upon it containing any allegation that Seller are causing air, noise, or water pollution. Seller, in any event, will take immediate steps to halt, remedy or cure any such pollution caused by Seller in connection with the use of the Property.

17. **COVENANT AGAINST LIENS.**

Seller agrees that it shall not encumber, or suffer or permit to be encumbered, the Property or the fee thereof by any lien, charge or encumbrance, and Seller shall have no authority to mortgage or hypothecate this Agreement in any way whatsoever.

18. **HAZARDOUS SUBSTANCES PROHIBITED**

(a) For purposes of this Agreement, "Hazardous Substances" include any pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials or hazardous substances as defined in or pursuant to the Resource and Conservation Recovery Act (42 U.S.C.1 SS6901 et seq.) (RCRA), the Comprehensive Environmental Response,

Compensation, and Liability Act (42 U.S.C. SS9601 et seq.) (CERCLA) or any other federal, state or local environmental law, ordinance, rule or regulation..

(b) Seller shall be prohibited from bringing upon or permitting any of their employees or agents from bringing upon the Property any hazardous substances, as defined in subsection (a) above, except such hazardous substances as may be used or stored for heating purposes. In the event Seller, or any of their employees or agents, permits any such hazardous substance to be brought upon the Property, Seller hereby agree to defend (with counsel satisfactory to Norfolk) and to indemnify and hold Norfolk harmless from and against any and all claims, losses, liabilities, damages and expenses (including, without limitation, reasonable cleanup costs and attorneys fees arising under this indemnity) which may arise directly or indirectly from any use or Release of Hazardous Substances on the Property and losses and claims against Norfolk resulting from Seller's failure to comply strictly with the provisions of this section.

19. **SURRENDER AT END OF TERM.**

19.1 Seller will surrender possession of the Property and remove all goods and chattels and other personal property in the possession of Seller by whomsoever owned, at the end of the term of this Agreement, or at such other time as Norfolk may be entitled to re-enter and take possession of the Property pursuant to any provision of this Agreement, and leave the Property in as good order and condition as it was on the Commencement Date, reasonable wear and tear excepted.

19.2 If Seller fails to remove all goods and chattels and other personal property in possession of Seller, by whomsoever owned, at the end of the term of this Agreement, or at such other time as Norfolk may be entitled to re-enter and take possession of the Property pursuant to any provision of this Agreement, Seller hereby irrevocably appoints Norfolk as the

agent and attorney-in-fact of Seller to remove all goods and chattels and other personal property, by whomsoever owned, from the Property to a reasonably safe place of storage, such moving and storage to be at the sole cost and expense of Seller. Seller covenants and agrees to reimburse and pay Norfolk all expenses which Norfolk incurs for the removal and storage of all such goods and chattels. In addition, at the option of Norfolk, Seller shall be deemed to have abandoned such goods, chattels and other personal property and the same shall become the property of Norfolk. Seller shall reimburse and pay Norfolk for all expenses incurred in the removing or disposing of the abandoned property.

19.3 No act or thing done by Norfolk shall be deemed an acceptance of the surrender of the Property unless Norfolk shall execute a written release of Seller. Seller's liability hereunder shall not be terminated by the execution by Norfolk of a new Agreement.

20. **DEFAULT BY SELLER**

20.1 If before or during the term of this Agreement there shall occur any of the following events ("Events of Default"):

(a) if Seller shall make a general assignment for the benefit of creditors, or shall admit in writing their inability to pay the debts as they become due, adjudicated a bankrupt or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Seller or of any material part of their assets, and such appointment shall not have been vacated; or

b) if the interest of Seller in the Property shall be sold under execution or other legal process (other than the sale to Norfolk); or

(c) if Seller shall fail to perform or observe any requirement, obligation, agreement, covenant or condition of this Agreement, and any such failure shall continue for 15 days after Norfolk gives Seller notice thereof; or

(d) if any representation or warranty contained in this Agreement shall prove to be incorrect in any material respect on the date upon which it was made; then at any time following any of such Events of Default, Norfolk, without waiving any other rights herein available to Norfolk at law or in equity, may either (1) give Seller notice of termination of this Agreement, or (2) without terminating this Agreement, give Seller notice of Norfolk's intention to re-enter and take possession of the Property, with or without legal process. The giving of either of such notices to Seller shall terminate Seller's right to possession of the Property under this Agreement without prejudice, however, to the rights of Norfolk to exercise all other available legal remedies and without discharging Seller from any of their liabilities hereunder.

20.2 If Norfolk elects to terminate Seller's right to possession of the Property under Section 22.1 following an Event of Default, Norfolk may re-enter and take possession of the Property, with or without legal process, and Seller hereby waive any claim for damages as a result thereof, and Norfolk shall be entitled to recover of and from Seller the cost to Norfolk of all reasonable legal and other expenses and costs (including reasonable attorney's fees) incurred by Norfolk in obtaining possession of the Property, in enforcing any provision of this Agreement, in preserving the Property during any period of vacancy.

20.3 No remedy herein conferred upon or reserved to Norfolk is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. The receipt and acceptance by Norfolk of rent with knowledge of the default by Seller in any of Seller's obligations under this Agreement shall not be deemed a waiver by

Norfolk of such default. Nothing contained in this Agreement shall limit or prejudice the right of Norfolk to petition for and obtain in proceedings for bankruptcy or insolvency an amount equal to the maximum allowed by any statute or rule of law in effect at the time when and governing the Proceedings, in which the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above.

20.5 No waiver by Norfolk of any Event of Default or any default by Seller in any covenant, agreement or obligation under this Agreement shall operate to waive or affect any subsequent Event of Default or default in any covenant, agreement or obligation hereunder, nor shall any forbearance by Norfolk to enforce a right or remedy upon an Event of Default or any such default be a waiver of any of its rights and remedies with respect to such or any subsequent default or in any other manner operate to the prejudice of Norfolk.

21. **NO JOINT VENTURE.**

It is hereby agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture between Norfolk and Seller, or between Norfolk and any other party, or cause either party to be responsible in any way for the debts or obligations of the other party.

22. **QUIET ENJOYMENT.**

Norfolk covenants that Seller, on performing the covenants and conditions contained in this Agreement, shall and may peaceably and quietly have, hold and enjoy the Property for the term aforesaid.

23. **NOTICES**

Whenever it is provided herein that notice or other communication shall or may be given to or served upon either of the parties, it shall be in writing, and any law or statute to the contrary notwithstanding, shall be given as follows:

To Seller:

Mr. & Mrs. Wayne E. Morgan
3575 Mississippi Avenue
Norfolk, VA 23502

To Norfolk:

Manager of Real Estate
City Hall, Suite 306
810 Union Street
Norfolk Virginia 23510

With copy to: City Attorney
900 City Hall
810 Union Street
Norfolk, Virginia 23510

24. **WAIVER OF TRIAL BY JURY.**

Norfolk and Seller hereby mutually waive their rights to trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Agreement, Seller's use or occupancy of the Property, and any claim of injury or damage.

25. **ENTIRE AGREEMENT.**

This Agreement contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties.

26. **APPLICABLE LAW.**

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, and any suit arising out of this Agreement only shall be brought in the State or Federal Courts located in the State of Virginia. In the event of any such suit, the parties hereto consent to the personal jurisdiction of such courts and waive any defense based on improper venue.

27. **NORFOLK'S RIGHT TO ENTER.**

Norfolk and its agent shall have the right to enter into and upon the Property, after giving notice to Seller, for the purpose of inspection.

IN WITNESS WHEREOF, the parties have executed or have caused this Agreement to be executed.

CITY OF NORFOLK

By: _____
City Manager

ATTEST:

City Clerk

Approved as to content:

Approved as to form and correctness:

Manager of Real Estate

Deputy City Attorney

WAYNE E. MORGAN

ANITA D. MORGAN

STATE OF VIRGINIA
CITY/COUNTY OF _____, to-wit:

I, _____, a Notary Public in and for the City/County of _____, in the State of Virginia, whose term of office expires on _____, do hereby certify that Wayne E. Morgan, whose name is signed to the foregoing Possession Agreement dated _____, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this _____ day of _____, 2010.

Notary Public

Registration No.

STATE OF VIRGINIA
CITY/COUNTY OF _____, to-wit:

I, _____, a Notary Public in and for the City/County of _____, in the State of _____, whose term of office expires on _____, do hereby certify that Anita D. Morgan, whose name is signed to the foregoing Possession Agreement dated _____, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this _____ day of _____, 2010.

Notary Public

Registration No.